

1739. *November 30.* ANNA CRAWFURD and Her HUSBAND *against* NEWAL.

No 20.

A factor taking bond in his own name for his constituent's money, the *jus exigendi* remains with the factor's heir.

WHERE a factor takes a bond in his own name for his constituent's money, the *jus exigendi* continues with his heir; for, should it accresce *ipso jure*, the factor would be excluded from claiming deduction on account of expense, which yet is certainly competent to him.

Wherefore, a factor having taken bond in his own name, for his constituent's money, in a process at the instance of the heir of the factor against the heir of the debtor, though the COURT was of opinion, that the constituent appearing might be preferred, allowing the factor's expense, yet they 'Repelled the objection proponed by the debtor to the pursuer's title, and found that the pursuer had the *jus exigendi*, reserving all defences competent against the constituent.'

*Fol. Dic. v. 3. p. 202. Kilkerran, (FACTOR.) No 3. p. 182.*

No 21.

1742. *July 7.* DUNCANS EXECUTORS of Duncan *against* BLAIR.

It was here found, that commission was due to a factor, not only on bills, whereof payment had been recovered, but also on bills on which diligence had been used by the factor; but not if he had done no more than to protest the bills; and that such was the merchant custom.

*Fol. Dic. v. 3. p. 202. Kilkerran, (FACTOR.) No 5. p. 183.*

No 22.

A factor receiving a subject from his constituent, tho' it be certified to belong to another person free from any claim of retention, is bound to account to the constituent, and not to the owner.

1786. *January 27.* WILSON, GREGORY, and COMPANY *against* JOHN OLD.

A MERCANTILE house in Scotland transmitted to Old, their factor in the West Indies, a quantity of goods for sale on commission. The goods were ascertained to him as belonging to Wilson, Gregory, and Company, and as being exempted from any claim in behalf of his constituents for commission-premium, or for freight. In consequence of a demand afterwards made by the owners, he promised to remit to them the proceeds of the sale; which, however, he having failed to do, they, on his return to this country, instituted in an action against him. In defence, he alleged that he had accounted for those proceeds to his constituents; and

*Pleaded*; It is to his constituent alone that a factor is bound to render an account. Other persons, indeed, may have an interest in the subject of the factory; but to that he is not bound to pay any regard beyond the limits of his instructions.

*Answered*; If it is certified to a factor, that the subject of his factory belongs to a person against whom, as in the present case, neither he himself nor