

(DUE by FACTORS.)

1752. December 6.

CAMPBELL of Calder, *against* ROSE of Blackhill.

No 53.

A factor found liable for interest upon the rents uplifted by him, from the time of the demand made upon him to clear accounts. No salary having been agreed on, he was allowed two and a half *per cent.* of the money uplifted.

IN the year 1731, Campbell of Calder appointed John Hay, writer to the signet, commissioner and factor for managing his affairs in Scotland. Mr Hay granted a sub factory to Rose of Blackhill, for levying the rents of his constituent's estate. In this sub-factory a reasonable gratification is provided for Rose, but the particular sum is not specified. Rose received the rents of the 1730, 1731, and part of the 1732. In the 1733, Mr Hay, by letter, warned Rose to give in his accounts; which, however, he never did. The factory granted to Mr Hay having ceased, Campbell of Calder, in the 1748, insisted in a process of count and reckoning against Rose, and concluded that he should make payment of the balance due by him, with the interest from the 1732, when the balance came into his hands.

Pleaded for the pursuer: It is the duty of a factor to account for all rents by him received; and to pay them instantly to his constituent. He is as much obliged to this, by virtue of his commission, as a debtor is bound to pay the creditor upon a charge of horning and denunciation: A demand is not necessary; and if it were, it has been made, first in the 1733, and since that time repeated; so that from the whole of the case, interest is due.

Answered for the defender: The claim made by the pursuer is not founded in law, nor supported by any decision: the act of *seclerunt*, by which factors named by the Court of Session are bound to pay interest from a year after the rents are due, plainly supposes, that, at common law, factors are not liable for interest *ex mora*; were it otherwise, factors appointed by the Court of Session would, contrary to what is universally believed, be in a better situation than other factors; for the former are only liable after a year, the latter would be liable from the moment that they receive their constituent's money; nor will the case here be altered by the extra-judicial demand made by Hay, that not being a demand known in law, which requires a demand by process.

'THE LORDS found the defender liable for interest upon the rents uplifted by him, from the time of the demand made upon him to clear his accounts; and, as there was no factor-fee agreed upon, they fixed the salary at two and a half *per cent.* of the money uplifted by him.'

Act. A. Lockhart.

Alt. J. Burnet.

Clerk, Kirkpatrick.

Dalrymple.

Eol. Dic. v. 3. p. 28. Fac. Col. No 42. p. 63.