

1805. July 6.

YORK-BUILDINGS COMPANY *against* ROBERTSON, and Others.

No. 2.

Extent of the claim of retention of an officer of a company, over the common seal and papers, for arrears of salary due to him by the company.

ROBERT MACKINTOSH, Esq. Advocate, was Governor of the York-Buildings Company at the time of his death. In this capacity he had possession of the seal and charter of the company, with various papers belonging to them, which were found in his repositories. General Robertson of Lude, and the other executors of Mr. Mackintosh, declined to give up possession of these seals and writings, until they obtained payment of a large sum which they alleged was due by the company to the late Mr. Mackintosh, by bonds, and also as the arrears of his salary, as Governor and ordinary counsel of the company, which had not been paid for many years.

The York-Buildings Company presented a petition to the Sheriff of Edinburgh, praying, That he would order the seals and writings to be immediately delivered to them by Mr. Mackintosh's executors; and the Sheriff, upon advising the petition, with answers, found, That the company were entitled to demand the seals and papers, and ordered them to be delivered up accordingly.

The executors presented a bill of advocacy; and the Lord Ordinary appointed the case to be stated in memorials to the Court.

The company contended, That the principle of retention does not apply to the case of papers or effects put by a debtor into the hands of his creditor for a special purpose, beyond the expense which may have been incurred in effectuating that purpose; that the seals and charters of the York-Buildings Company were not put into Mr. Mackintosh's hands for the purpose of security for a debt, but merely in his official capacity of Governor, and that his executors are not entitled to use the possession so obtained, in order to effectuate other purposes.

The executors maintained, That the claim of Mr. Mackintosh for arrears of salary, arose from the very nature of the office he held under the company, in consequence of which office these seals and papers were put into his hands; and that as a steward or factor on a landed estate may retain the balance of his intrusions till he be paid his disbursements, so a depository may retain the subject entrusted to him, until he is reimbursed for the expense and trouble attending the deposite.

The Court refused the bill, so far as regarded the custody of the seal and charter, but passed the bill as to the custody of the other papers.

Lord Ordinary, *Armadale.*

Act, *Baird.*

Agent, *Jos. Cauvin, W. S.*

Alt. *Fletcher.*

Agent, *Wm. Dallas, W. S.*

Clerk, *Macdonald.*

J.

*Fac. Coll. No. 218. p. 492.*