

entered an appeal on the grounds already stated, the House of Lords ' Ordered and adjudged, that the interlocutors complained of be reversed, and that the decree of the Judge Admiral in Scotland be affirmed.' March 6. 1822.

J. CAMPBELL,—J. RICHARDSON,—Solicitors.

(*Ap. Ca. No. 8.*)

JOHN BOYES, Appellant,—*Clerk—Millar.*

No. 27.

Mrs. SCOTT WARING, Respondent.—*Gifford—Forsyth.*

Factor.—Circumstances in which it was held, (affirming the judgment of the Court of Session,) that the son and heir of a factor employed to uplift rents had no right to demand a recompense for his father's services, or for his own.

IN 1798, James Duke of Hamilton being desirous to make a provision in favour of the respondent (then Mrs. Esten,) and her daughter Miss Hamilton, executed two leases, by which he let to his factor, Captain Boyes, his heirs, assignees, and subtenants, certain farms in Lanarkshire and Linlithgowshire, for 19 and 21 years, at small rents. On the other hand, Captain Boyes granted two deeds declaratory of the nature and objects of these leases; and in particular declaring, ' That whatever advantages or rise of the money-rents can be obtained by subsetting the lands and farms before mentioned, or by assigning the said lease, or any part thereof, shall be held in trust for the use and behoof of the said Mrs. Harriet Pye Esten during her lifetime, and of Ann Douglas Hamilton, her daughter, and any other child or children that may be procreated between the said Duke and her, in manner underwritten: And she has further reposed in me the trust and charge of collecting the surplus money-rents to be obtained by subsetting, or the prices to be got by assignments: Therefore I hereby oblige myself and my heirs, or others succeeding to me in the said lease, to use all manner of diligence and pains in getting said lands and farms subset for the highest rents that can be got therefor, and to report my diligence and success therein to the said Mrs. Harriet Pye Esten, delivering to her a faithful and true account, from time to time, of the rises of rent that may be obtained by subsetting, and the prices or consideration to be obtained by assignment of the lease, or any part thereof; and, after paying the respective rents stipulated by the said leases, to pay over to the said Mrs. Harriet Pye Esten all

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March 6. 1822. ‘ and whatsoever sum or sums of money as may be so got, raised,
‘ and recovered by me from my subtenants or assignees, upon
‘ subsetting the said lands and farms, or any part or parts thereof ;
‘ and, after her death, to pay over the same, along with what
‘ may remain unaccounted for to herself, to the said Miss Ann
‘ Douglas Hamilton, and any other child or children she may
‘ have as aforesaid, equally among them, or in such proportions
‘ as the said Mrs. Harriet Pye Esten may direct and appoint by
‘ any writing under her hand, and that yearly and termly during
‘ the currency of the said lease, and as soon as the same can be
‘ got in, uplifted, and recovered by the ordinary and usual modes
‘ of process and diligence, deducting always all charges of manage-
‘ ment, and a reasonable allowance for my own trouble.’—In pur-
suance of this trust, Captain Boyes subset the whole farms at an
increased rent, and accounted yearly for the surplus to the re-
spondent till the period of his death, in 1812. In the accounts
which he so rendered, he deducted the expenses of manage-
ment, but made no charge for his own trouble. Immediately
on the death of Captain Boyes, his son and heir (the appel-
lant) began to uplift the rents; but notice was forthwith given
to him by the respondent that he was not to do so. He how-
ever persevered, and it was necessary to resort to legal mea-
sures, both to prevent him from uplifting the rents, and to com-
pel him to denude of the leases. Soon after the death of James
Duke of Hamilton, his successor Archibald Duke of Hamilton
having raised an action for setting aside the leases, brought a
process of multiplepoinding in name of the appellant, with a
view to make him account for the rents with which he had intro-
mitted. In this process the appellant was required to consign
the amount; but this he resisted on the ground that he was en-
titled to take credit for £1200 as the amount of factor-fee due
to his father for twelve years, at the rate of £100 per annum,
and also for £150, as a fee to himself for acting as factor during a
year and a half after his father’s death. In support of these
claims, he contended, 1. That as his father was a professional
man, and had actually been at great trouble in the business of
the respondent, he was entitled, *ex lege*, to a proper recompense ;
2. That he had right to it *ex contractu*, because a reasonable
allowance for his trouble was stipulated in the trust-deed ; and,
3, That as the leases were taken to heirs, and the trust was to
the same effect, he was entitled, as heir of his father, to uplift the
rents, and to a factor-fee for doing so. To this it was answered,
1. That it was proved from the annual accounts rendered by
the appellant’s father for twelve years, and the letters accom-

panying them, that he had entirely given up whatever claim for factor-fee he might have had against the respondent, and that accordingly he paid to her the balances due on these accounts, without retaining any thing for his trouble;—that if he had intended to make any such claim, he would have deducted it, in terms of the trust-deed, from the sums received by him,—but that he did not do so, thereby showing that he had no intention of making such a claim :—that he evidently considered the emoluments derived from his office of factor for the Duke a sufficient recompense; and that the only difference which was made on his duty by the trust-deed was, that he remitted the rents to the respondent instead of the Duke. 2. That if there were any such claim, the appellant's father was liable to her for losses arising from omitting to recover rents; and, therefore, that if an accounting were to be gone into, a large balance would exist in her favour; and, 3. That as the appellant had uplifted the rents, not only without her authority, but in express opposition to her orders, he had no title to any remuneration for so doing.

Lord Craigie found, ' That, in the circumstances of the case, the pursuer (appellant) has no right to claim a recompense for any service performed by his father in relation to the leases held by him in trust for the objector (respondent) and her daughter; while the pursuer himself, never having been authorized to levy the rents, can have no claim of that sort.'—To this interlocutor the Court adhered on the 11th of February and 11th of March 1818.*—Boyes having appealed, the House of Lords (without hearing the respondent's counsel) ' Ordered and adjudged that the interlocutors complained of be affirmed, with £60 costs.'

Respondent's Authorities.—Grabame, Jan. 5. 1683, (6534); Seton, Jan. 31. 1684, (11385.)

J. CAMPBELL,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 9.*)

* Not reported.