

1785. June 16.

The CREDITORS of KILDONAN *against* DOUGLAS, HERON and COMPANY.

JAMES CHALMERS of Kildonan disposed his lands to Douglas, Heron and Company, in security of certain sums owing by him. The disposition contained the usual clause, authorising the creditors to enter into possession, and to name stewards and factors for recovering the rents; declaring, that they should be liable only for their intromissions, deducting all expenses in levying the said rents, and not for omissions or negligence of any kind.

Douglas, Heron and Company having assumed possession of the lands, and afterwards accounting with the postponed creditors for their intromissions, insisted for deduction of several sums as the salary of a factor, or as disbursed by him in the execution of his office, such as the expense of intimating his appointment to the tenants, and enquiring into the situation of the farms.

*Observed* on the Bench; An heritable creditor entering into possession, is to be viewed as a proprietor; and it would therefore be equally unreasonable, in this case, to allow a charge in name of factor-fee, or for any trouble undertaken in that capacity, as it would have been to award the like sums to the creditor himself when using, in person, those measures he thinks necessary for his security.

The Lord Ordinary had sustained these articles; but that judgment was altered by the COURT, after advising a reclaiming petition for the postponed creditors, with answers for Douglas, Heron and Company.

Lord Ordinary, *Justice-Clerk.*For the Postponed Creditors, *G. Ferguson.*For Douglas, Heron and Company, *Maconochie.*Clerk, *Menzies.*

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*Fol. Dic. v. 4. p. 246. Fac. Col. No 209. p. 328.*

1790. May 27.

The TRUSTEES for the CREDITORS of MESSRS FALL and COMPANY; *against* Sir WILLIAM FORBES, JAMES HUNTER and COMPANY, and Sir JOHN ANSTRUTHER.

SIR WILLIAM FORBES and COMPANY were in the practice of advancing money for the behoof of Messrs Fall; and on the other hand, the bills payable to them were usually indorsed and transmitted to the former.

In particular, Sir John Anstruther having accepted, without any value, several bills in favour of Messrs Fall, to aid their credit, those bills were indorsed to and deposited with Sir William Forbes and Company.

No 37.

Whether a disponee in security is entitled to charge the expense of a factor in levying the rents?

No 38.

A mercantile house had advanced money for a correspond: