

his constituent has any claim, his detaining such property, contrary to the will of the owner, is equally wrongful, as if, without the interposition of the former, he had received it immediately from the hand of the latter.

No 22.

THE LORD ORDINARY found, That the factor was bound to render an account to his constituents alone; and

THE COURT adhered to the interlocutor of the Lord Ordinary.

Lord Ordinary, *Stonefield*.
Clerk, *Home*.

Act. *Morthland, W. Stewart*.

Alt. *A. Campbell*.

S.

Fol. Dic. v. 3. p. 201. Fac. Col. No 251. p. 385.

1790. May 15.

LORD ELPHINSTONE, *against* ALEXANDER KEITH, Senior and Junior.

No 23.

MESSRS KEITH had long been the confidential agents of the late Earl Marischal. At different times they had rendered an account of their management, without making any demand for their personal services. On the other hand, although considerable sums had been allowed to remain in their possession, they were not required to pay interest.

In an action at the instance of the executor of a defunct against his factors, it was found that the factors having received no recompence for their services, were not liable to pay interest for the money in their hands before their constituent's death; but interest was found due for the money in their hands from the period of his death.

Earl Marischal died on 28th May 1778, after having made a settlement in favour of Lord Elphinstone. Some difficulties however occurred with regard to the effect of it; and it was not till the year 1780, that they were entirely removed. In 1788, an action having been brought by Lord Elphinstone against Messrs Keith, for the payment of certain sums lodged in their hands by Earl Marischal; the defenders claimed a deduction on account of their services; and they also *contended*, that no interest could be demanded from them.

THE COURT considered the mutual obligations between the defenders and Earl Marischal to be sufficiently ascertained, by the manner in which the accounts had been settled between them; the advantage derived by the defenders from the temporary use of the money deposited with them, having been viewed as a proper recompence for their personal trouble.

The only difficulty arose with regard to the interest of the money left in the defenders possession at the time of Lord Marischal's death. In general it was held, that a factor was not obliged, immediately after the death of his constituent, to pay interest for the money in his hands. As soon, however, as it could be known in what manner it was to be disposed of, if he did not put it into one of the banking-houses, it was thought just that he should be liable in the same rate of interest which might have been obtained for money so employed.

THE LORD ORDINARY found, 'That the defenders were not liable for interest on the above-mentioned balance.' But the COURT altered that interlocutor, and

No 23.

‘ Found the defenders liable in interest, at the rate of 4 per cent. on the money in their hands at Lord Marischal's death, from 28th May 1779, being a year subsequent to the death of Lord Marischal.’

Ordinary, *Lord Alva*.
Clerk, *Sinclair*.

Act. *Dean of Faculty, Abersromby*,

Att. *C. Hay*.

G.

Eol. Dic. v. 3. p. 202. Fac. Col. No 127. p. 246.

S E C T. IV.

Factor appointed by the Court of Session.—Act of Sederunt 1611.

1716. July 6.

SIR PATRICK HOME, Advocate *against* WILLIAM ROBERTSON Factor for the Estate of Renton.

No 24.
A factor appointed by the Court on an estate sequestrated till the claims of two pretenders to it were discussed, was removed, for contravening the act of sederunt, 22d November 1711, though that act only refers to factors on bankrupt estates.

By the judgment of the House of Peers, the estate of Renton having been ordained to be sequestrated, (upon a depending process anent the property thereof, betwixt Sir Patrick and Sir Robert Homes), and a factor appointed to be nominated by the Lords for managing the same for the behoof of the party who should in the event be found to have the best right; and William Robertson being accordingly appointed by the Lords for these ends, Sir Patrick, two years thereafter, moved by a petition that the said factor should be removed, as having contravened the act of sederunt 22d November 1711, articles 6, and 8, bearing, That, for the benefit of creditors, and that they may be acquainted with the state of the accompts of factors upon estates sequestrated, the Lords enact, that all such factors shall, within six months after extracting the factory, make up a rental of the estate, and of bygone rests, &c.; and art. 8. That the said factor shall once every year give in a scheme of his accompts to the clerk of the process, so that the creditors may have occasion of seeing them yearly, and provide themselves of proper means of checking them, &c.; and this on the pain of being removed, and fined at the discretion of the Lords.

To this it was *answered* for the defender; That the act of sederunt founded on did in no ways concern the present case, it being only intended (as is plain from the very words) to regulate the conduct of factors on bankrupts estates, the creditors on such estates being the only persons for whose sake that act was