

an advocacy from the Sheriff of Dunbarton, who had ordered him to remove, found that he had a title to retain the subjects till the assignee should pay and relieve him the overseer of any balance that shall be found due to him on account of his advances or engagements for the said mines. See REMOVING.

No. 8.

1750. *November 2.*

CLAIMS on the Estate of Tarpersie.—LADY HENRIETTA GORDON'S Case.

A FACTOR to uplift and receive a debt and to pursue for it, whereon a decret had been obtained by the factor, has a sufficient title to enter a claim for the debt on a forfeited estate, though no special power be mentioned to enter such claim.

No. 9.

1751. *January 8.*

ANDREW DRUMMOND'S Claim on the Estate of Strathallan.

WE repelled an objection to a claim, that it was signed only by a factor having a general factory as old as 1737, long before the forfeiture, but it gave power to sue for all debts then due, or that should grow due, in his own name, and to receive payment for the constituent's behoof.

No. 10.

1753. *December 6.*

HOY *against* KENNEDY and M'LEAN, Merchants in Glasgow.

HOY, factor in Holland, sued Kennedy and M'Lean, merchants in Glasgow, for L.533, as the price of mader and tartar commissioned by them from him, and which he shipped for them in a ship to Leith; and produced bill of lading for two butts and one cask, and specifying the contents, with his invoice of the goods. They first obliged him to prove that these goods were packed in the butts and casks so shipped; and that being proved, their defence was, That he had not given them timeous notice of his obeying their commission, of his shipping the goods, or of the ship's name, or of the time of her sailing, so as they might insure; that the goods were shipped 12th August 1751, and the bill of lading then granted; that the ship sailed 25th August, and was cast away the 4th September; and the pursuer did not advise them of his shipping the goods till 14th September, which

No. 11.
What diligence
incumbent on a
factor?

No. 11. arrived at Glasgow only a few days before the news of the loss of the ship, so that it was not in their power to insure; and even that advice neither brought the bill of lading, nor invoice, nor ship's name; whereas by the custom of merchants, particularly of Glasgow, the factor should advise how soon he shipped the goods, or at farthest when the ship sails. Answered: In these short voyages, if the merchants intend to insure, they always send orders for that purpose to the factor; that the letter of advice and bill of lading are commonly sent with the ship, and if the ship perishes, must perish with her; and when it is sent by post, very often it does not arrive so soon as the ship. Lord Murkle repelled the defence; and we adhered and found expenses due; but the question is still kept open by a reclaiming bill and answers.*

See Executors of Ross, 13th January 1737, *voce* ANNUALRENT.

See Lockhart against Heirs of Murdieston, 27th January 1736, *voce* NEGOTIORUM GESTOR.

* See NOTES.