

1735. February 14.

No 7.

Captain STEPHENS *against* CREDITORS of YORK BUILDINGS COMPANY.

A FACTOR is not obliged to yield possession to his constituent, or give up any subject in his hand, until he get payment of salary and disbursements; and this is upon a stronger footing than compensation or retention. It is founded in strict law, as being implied in the mutual contract betwixt them; and, in all cases, the *actio contraria* must meet the *actio directa*. As a consequence of this, if a factor sell his constituent's effects, and take the price payable to himself, he will be preferable in a competition to his constituent, so long as he has any thing to claim by the *actio contraria*. And, for the same reason, it was found, that he must be preferable to the constituent's creditors arresting the price in the purchaser's hand.—See APPENDIX.

Fol. Dic. v. 1. p. 594.

1743. June 22.

No 8.

CRAWFORD *against* MITCHELL.

A WIFE having assigned a portion to her husband in the contract of marriage, on condition of his providing her if she survived him in a certain liferent, a creditor of the husband's arrested the portion, as yet unpaid, in the hands of the wife's brother. THE LORDS found, that the brother was not obliged to make the sums arrested furthcoming, unless the arrester should find caution for the whole liferent provided to the wife, in case of her survivance.

Fol. Dic. v. 4. p. 12. C. Home.

*** This case is No 31. p. 8266. *voce* LIFERENTER.

1744. December 11.

No 9.

MURRAY *against* GRAHAM.

A HUSBAND, in a contract of marriage, being bound by certain provisions and stipulations in his wife's favour, her father, on the other side, engaged to pay a certain sum in name of tocher. After the husband's death, the father was found entitled to retain the tocher till his daughter's claim for the stipulation in the contract was satisfied; but he was not found entitled to retain any part in lieu of the widow's aliment to the term following her husband's death.

Fol. Dic. v. 4. p. 12. D. Falconer.

*** This case is No 122. p. 5918. *voce* HUSBAND AND WIFE.