

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

devised ; and as it is specially conceived in favours of creditors, as the act itself expresses it, so the ratio of the law plainly points out, that it was for their behoof only that it was framed, in order to their being acquainted, as the act says, with the state and condition of the estate, and have yearly occasion to see the form of administering it : But the estate of Renton is not so much as pretended to be bankrupt ; nor was it sequestrated on that account, the sequestration being made by ordinance of the House of Peers, as being alleged to be in Sir Patrick's person as a trust, and therefore sequestrated only to the behoof of him who should be found to have the best right : Nevertheless,

' THE LORDS found the factor having failed to observe the tenor of the act of sederunt, they removed him conform to the said act.'

Act. Sc.

Alt. Hay.

Clerk, M'Kenzie.

Fol. Dic. v. 1. p. 288. Bruce, v. 2, No 13. p. 16.

No 24.

1750. January 11.

M'LEAN Petitioner.

ROBERT M'ALASTER being appointed factor on the sequestrated estate of Skelbo, obtained decrees against Erick Sutherland, Esq; commonly called Lord Duffus, for certain tack-duties due by him for his possession of a part of the estate, for some years preceding the year 1742.

By a subsequent act of factory, Robert M'Alaster was discharged, and James M'Lean appointed factor, with power to uplift the rents and duties of crop 1743, and in time coming till recalled, and all other powers usual, and likewise to call M'Alaster the former factor to account.

In virtue of this factory, M'Lean brought a process before the Lords against Erick Sutherland for the rents of crop 1743, and for the sums contained in the decrees obtained against him for preceding years by M'Alaster the former factor, which the Ordinary once and again ' Sustained, and decerned for the sums contained in the said decrees ;' but at last, upon a representation from the defender, ' Superseded advising the debate as to the rents preceding the 1743, contained in the decrees obtained by the former factor against the defender, until the factor should apply to the Lords to have his factory explained.'

And the factor having now applied for such explanation, THE LORDS ' Found the factor entitled to pursue for the sums contained in the decrees, and decerned.'

Kilkerran, (FACTOR.) No 8. p. 184.

No 25.

A factor appointed by the Court found entitled to pursue for sums contained in decrees obtained by a former factor who had been discharged.