

1750. June 19.

SHAW Petitioner.

No 26.

When a factor on a sequestrated estate cannot get the lands let at the former rent, he must apply to the Lords for a warrant to let by roup for a lower rent.

WHEN a factor cannot get the lands let at the former rent, he applies to the Lords for a warrant to let by roup for a lower rent, which the Lords grant generally only for one year, but never for a space exceeding three years; and which they granted in this case on account of some special circumstances, although the factor had not first exposed the lands to roup.

Though some were of opinion, that, in all cases, the factor should first try a roup, setting up the lands at the former rent, before he apply to the Lords, in order to guard as far as possible against collusion on the part of the factor.

Fol. Dic. v. 3. p. 203. Kilkerran, (FACTOR.) No 9. p. 185.

1752. February 6.

GILCHRIST Petitioner

No 27.

A factor appointed by the Court, while a party was abroad, was found obliged to account to the party himself when he returned.

UPON the death of Provost M'Tagart in Irvine in 1739, it being uncertain whether his son and heir, who had sometime before gone to the South-Sea Company's service at La Vera Cruz, and had not since been heard of, though several letters had been wrote to him, was dead or alive, the friends of the family applied for a factor; when William Gilchrist in Kilmarnock was appointed, with the usual powers, and accordingly uplifted the rents.

Application was now made by the said factor, setting furth, that letters had come from the son of M'Tagart, who was residing at La Vera Cruz, and who for hereafter would manage his own affairs, but craved to be discharged of his factory, and that an Ordinary should be appointed for auditing his accounts, and exonerating him.

This THE LORDS refused to grant, as an improper application; now that the man himself had appeared, it was to him that the factor was to account, and when a proper discharge by him to the petitioner is produced, the LORDS will then order up his bond of cautionry.

Fol. Dic. v. 3. p. 203. Kilkerran, (FACTOR.) No 10. p. 185.

1757. July 9.

ANDREW THOMSON, Factor appointed by The LORDS upon the Estate of Crabston against JOHN ELDERSON.

No 28.

A factor named by the Court of Session on a sequestrated estate, has all the powers of

BETWIXT these two parties this abstract question occurred, whether a factor upon an estate, sequestrated on account of a competition betwixt two claimants, neither of whom are infeft, can remove a tenant who continues to pay the rent that he did to the original proprietor?