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 exonering 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?

No 28.
management which belong to a proprietor infeft.

Pleaded for Elderson the tenant, As the favour of possession is in law very great, so no tenant in possession can be removed but by a person who has a stronger right in him, viz. the property evinced by an infeftment. Besides, in the law of Scotland, a tack, if clothed with possession, is a real right; and therefore, added to the favour of possession, there is likewise the favour due to a real right, which nothing but a property and a possession can remove. Founded on these principles, the law of Scotland carries the rule, that only a person infeft can remove, so far, that even an apparent heir cannot remove, although in a manner the same person with his ancestor, drawing the rents, living in the mansion-house, and with whom, at the distance of three years, creditors are in safety to contract.

Any exceptions from the general rule do only tend to strengthen it. An adjudger, with a charge against the superior, may remove; but this is only because a particular statute has made a charge equivalent to an infeftment. A liferenter, by the courtesy, or by the terce, may remove; but this is only because, by the general concession of our law, the continuance of the possession in these cases is deemed to be a continuation of the property which the deceased husband or wife originally had. A tacksman may remove a subtacksman who was bound to remove; but this is only because the subtacksman cannot come against the right by which himself holds; and in a question betwixt him and a person from whom he derives right, this last is, *quoad* him, a *quasi* proprietor.

Answered, A factor appointed by the Court of Session ought to have all the powers of a proprietor infeft, to enable him to manage the estate to the best advantage; and as he acts under the authority of the Supreme Court, and is tied down upon strict regulations, for the benefit of those who shall be found to have the preferable right, it would be absurd to control his power of setting the lands to the best advantage, on account of a maxim in law, which was calculated only to prevent intruders from removing tenants from the possession.

'THE LORDS decerned in the removing.' *See* REMOVING.

For Thomson, *Garden*. For Elderson, *Jo. Dalrymple*.

J. D. *Fol. Dic. v.* 3. *p.* 203. *Fac. Col. No* 41. *p.* 68.

1785. *July* 24. JAMES PATON Petitioner.

No 29.
Factor for an heir apparent appointed by the Court of Session, may make up inventories in terms of the act 1695, c. 24.

The petitioner having been appointed by the Court to manage, in the absence of an apparent heir, the heritable estate of a person deceased, applied to be authorised to make up inventories in terms of the act 1695, c. 24.

A difficulty arose from the manner in which this statute is expressed, enacting, 'That for hereafter, any apparent heir shall have free liberty and access 'to enter to his predecessors *cum beneficio inventarii*, or upon inventory, as