*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.

No 28. management which belong to a proprietor infeft.

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.

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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

No 29.

'use is, in executories and moveables; allowing still the said apparent heir 'year and day to deliberate, in which time *he* may make up the foresaid inventory, 'which *he* is to make up, upon oath, full and particular, as to all lands, &c. 'to which the said apparent heir may or pretends to succeed, which inventory, 'to be subscribed by *him* before witnesses, shall be given in to the clerk of the 'shire,' &c. From which words it might be thought that the legislature required, in the execution of this formality, the personal interposition of the apparent heir himself.

The Lords, however, were clearly of opinion, that the petitioner was, from the nature of his office, sufficiently empowered, in the place of the apparent heir, to fulfil the directions of the statute. But they refused the petition, considering this as an act of administration which the factor ought to perform, without any special authority from the Court.

For the Petitioner, *Ro. Craigie.* Clerk, *Campbell.*

*C.* *Fol. Dic. v.* 3. *p.* 203. *Fac. Col.* No 224. *p.* 350.

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1788. *December* 24.

Robert Playfair and Others *against* William Walker, George Mawer, and Others.

No 30.
Money recovered by a factor on a sequestrated estate must not be placed in the hands of a private individual, but only in a Bank or banking house. If not so deposited the factor is liable.

The estate of a merchant in Dundee having been sequestrated, and William Walker and George Mawer chosen factors, it was resolved by a majority of the creditors, that the sums recovered by them should be lodged in the hands of one or other of six merchants in Dundee, who were in use, in the same manner as bankers do, to take up money on promissory-notes, but who could not, properly, be said to carry on the business of banking.

The reason of this proceeding was, that there was no banker or banking-company in Dundee, who would give any thing for the use of money so deposited. And the greatest part of the creditors, and almost the whole effects falling under the sequestration were in the neighbourhood of that town. Playfair, however, and other creditors, complained to the Court of Session, and

*Pleaded*, That the money recovered out of a bankrupt-estate may be properly secured for the creditors, it has been provided, that it shall be lodged 'in a bank or banking-house, or in the Royal Bank or Bank of Scotland.' A depositation, therefore, in the hands of any individual, though he may carry on the banking business, and *a fortiori* the placing of it in the hands of a person who cannot, with any propriety, be called a banker, is contrary to the words of the enactment; and, in many instances, might be attended with mischievous consequences.

*Answered*, The purpose of the legislature certainly was, That the money belonging to sequestrated estates should be intrusted to those persons only