

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 re-  
quired, in the execution of this formality, the personal interposition of the ap-  
parent 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, con-  
sidering 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.*

1788. December 24.

ROBERT PLAYFAIR and Others *against* WILLIAM WALKER, GEORGE MAWER,  
and Others.

No 30.

Money reco-  
vered 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 man-  
ner 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 depo-  
sited. And the greatest part of the creditors, and almost the whole effects fal-  
ling 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 pro-  
perly 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  
deposition, 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 mischie-  
vous consequences.

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

whose responsibility is so much the object of general attention as, in a great measure, to preclude the hazard of an improper choice. The circumstance of carrying on the banking business in partnership seems of no importance; nor does it appear that any exclusion was meant of persons who carry on an extensive trade, and who, by the trust which they uniformly receive of money on their promissory-notes, appear to be as much possessed of the public confidence as any banker can be. In the present case, the choice of those who are chiefly interested, influenced by reasons of common utility to all, ought to preponderate, if the words of the enactment can admit of any doubt.

THE COURT did not precisely determine, whether, in such cases, money could be deposited in the hands of an individual carrying on the trade of a banker; but it was thought, that the persons suggested by the creditors, not being bankers, the resolution complained of was unauthorised by the statute.

THE LORDS found, 'That the lodging of the money in the hands of the persons mentioned in the complaint was not warranted by the statute; and decreed accordingly.' See No 276, p. 1251.

For the Complainers; *Dean of Faculty.*

*Alt. W. Miller.*

*Gr.*

*Fac. Col. No 52. p. 92.*

Who runs the hazard of accidents, the factor or constituent? See PERICULUM.

Diligence of factors; See DILIGENCE.

Factor may assign a debt due to him by his constituent, *ante redditas rationes*; See COMPENSATION—RETENTION. See PAYMENT.

Flars of the year, rule of accompting; See FLARS.

Liable for annualrent; See ANNUALRENT.

Who names the factor upon a bankrupt estate sequestrated? See SEQUESTRATION.

Entitled to expenses; See EXPENSES.

Bound to communicate eases; See PACTUM ILLICITUM.

See Borthwick against Scot; Durie, p. 647, *voce* PERSONAL and REAL.

See APPENDIX.