

Right of Succession to it were determined and to be accountable to the Heir that should enter; was appointed by a Gift from the King 24 July 1677 ^{Earl Melville} and his Son contra Bruce. But more ordinarily such Factors are named by the Court of Session. The Lords of Session at the Desire of Parties interested appoint Factors upon several Occasions: As for managing an overburdened Estate pending the Ranking of the Creditors Interests; or hereditatem pcentem during the Time an apparent Heir deliberates; or for managing the Estates of Pupils wanting Tutors; or of Persons who are gone Abroad without empowering any to act for them in their Absence; or who are under some Incapacity for the Time to manage their own Estates; or for keeping contraband Marables, as Jewels Plate Heirship &c. which the Lords use to sequester in the Hands of indifferent Persons, till it appears who has best Right there to. And one may obtain an interim Sequestration of any Piece of Ground, Corn Heats Turves, concerning which he hath a doubtful Plea with Person inclined to Irregularity. All which Factors of whatever Kind find Caution, and are accountable for what they have in Trust, and obliged to make the same forthcoming to the Persons who shall be found to have best Right to it.

The Lords are very circumspect in the Choice of a Person to be Factor upon a Bankrupt Estate, so as not to allow the common Debtor, and seldom his Son, or any conjunct Person to him to be Factor. Nor must Factors appointed for managing sequestered Estates be Writers or Dependens on the Session. Who are incapable to be named Factors by the Authority of the Lords, tho' the Creditors should consent. If they suppress their Designations by their ordinary Employment, to obtain such Factories, they are incapable to manage Processes thereafter, and liable to Imprisonment during the Lords Pleasure. And if any such Factor in Favour of a Writer or Dependens on the Session be extracted, the same is null: Without Prejudice to the Creditors to call such Factors and their Cautioners to account as if they were lawfully appointed Act of Seder. 23. Novemb. 1710. The Reason why Persons doing Business in the Session are disabled to be Factors of sequestered Estates, is because formerly such Men frequently got themselves named to be Factors and being called to account for their Intromissions, prolonged the Process by Ways and Means to an intolerable Length, to the great vexation and Expence of the Creditors. Such Factors find Caution for their Diligence and Fidelity: And Bonds of Cautionary and Instructions appointed them by the Lords according to Law, Act of Seder. 22. Novemb. 1711. §. 10. They are allowed Salaries besides their Expences or after their Service: But most commonly such Salaries are modified at ^{piring}

piring of the Office, or at counting; that the same may be suited to their Merit and Deservement in the Office. No Fee was allowed to a Factor in Respect he had been negligent, and given up in his Account some Articles of Rents which had been really paid to him; and to allow such a Factor a Salary would encourage others to wrong their Constituents, 22 June 1711 ^{Her. contra Her.} They must give in to the Lords a Rental of the Estate and bygone Rents within Six Months after extracting their Factories Act of Seder. 22. Novemb. 1711. §. 6. And the Alterations in the Rental by Increase or Decrease within three Months of its happening ^{Act of Seder. 8. 7.} Which are to be lodged or put in the Hands of the Clerk of the Process, as a Charge against the Factor to be made forthcoming gratis to all Parties having Interest. They must also yearly give in Schemes of their Accounts charge and discharge, to the End that both the Lords and Creditors may have a true State of the Fortune still in their View. If such Factors fail in any Part of the Premises he a Ground to remove them. Further if the Rental reported by them be found defective and concealing, or any Addition thereof be omitted they shall be decreed in the Double of what is omitted: And for neglecting yearly to give a Scheme of the Accounts in Manner aforesaid, shall be liable in a Mulct to be modified by the Lords not under half a Year's Salary ^{Act of Seder. 8. 8.} Because formerly Creditors upon a sequestered Estate having easy Access to their Annualrents upon Application by a Bill to the Lords, who use to authorize the Factor to pay these Annualrents to such Creditors; they finding Caution to restore what they so got more than in the Event should be found due to them; were thereby rendered careless and encouraged to neglect carrying on the Ranking and Sale with Vigour: The Lords ordained that during the Dependence of a Ranking and Sale, no Annualrent should be paid to any real Creditor, unless it appear that there will be a free Superplus due to him in the Event; nor any Allowment given to the common Debtor, unless also it be clear, that there will be an Overplus after the Creditors are satisfied Act of Seder. 31. July 1690. The Factor is to uplift the Rents and pursue Tenants for bygone Rent, which, if they perish thro' his Neglect must be made up by him to the Creditors. And in Respect they cannot pay Annualrent safely to any of the Creditors till the Ranking be concluded, they are liable for Annualrent of what Rents they recover, or might have recovered, within a Year after the same are due d. Act of Seder. 31. July 1690. As to virtual Rents, the Factor is liable in general for the Prices he truly got from Merchants, these not being under the Friars: But the Lords sometimes according to Circumstances, ordain him to account to the Creditors, either according to the Friars, or the Prices he sold at 5 July 1710 Creditors of Dumfries forming