

caution for five years' rent. In just construction, the Act of Sederunt cannot apply to arrears that are due to some one else than the master: for the tenant must find security for arrears *incurred*,—that is, incurred by the person who pursues.

JUSTICE-CLERK. The Act of Sederunt, in the hands of wise and virtuous masters, will not be abused. The state of the tenant, with respect to extraneous creditors, was not under the eye of the Court in framing the act. The difficulties of the tenant are not less, when he owes money to the one man or to another. Whenever the arrear is separated from the person of the heir, it matters not to whom the arrear or debt is owing. If the executor's claim is sufficient to found a removing, so may the claim of another creditor.

PRESIDENT. Justified the Act of Sederunt, (unnecessarily attacked by Lord Gardenston.) Said that it was calculated to prevent quibbling objections to warnings, and that it was beneficial to tenants, as not forcing the master to use his right of hypothec, and yet securing him. What right had the heir to insist in a removing when he was secure and could not qualify any damage? And what interest has the heir to insist against a tenant who does not owe *him* a farthing, whatever he may be owing to other persons?

On the 18th January 1780, "The Lords suspended the letters *simpliciter*," without a vote.

*Act.* A. Murray, Ilay Campbell. *Alt.* Ch. Hay, R. Blair.

*Reporter*, Kennet.

*Diss.* Monboddo, Stonefield. *Non liquet*, Kaimes.

1780. January 20. JAMES HERIOT against JOHN WIGHT.

WRIT.

Devolution to an oversman in a submission, must be according to the Statute 1681.

[*Faculty Collection*, VIII. 195; *Dictionary*, 661.]

JUSTICE-CLERK. The deed is signed by both parties: Will not this be sufficient evidence of the fact?

PRESIDENT. The prorogation cannot be supported: the naming an oversman is, in effect, a new submission, and it is certain that a submission must be in the form prescribed by the Act 1681.

BRAXFIELD. There is a necessity of adhering to the Act 1681.

On the 20th January 1780, "The Lords sustained the reasons of reduction."

*Act.* J. M'Laurin. *Alt.* Ch. W. Little.

*Reporter*, Alva.