

day 1763 was necessary in order to obtain a decret of removing at Candlemas and Whitsunday 1764.

No 109.

THE LORDS remitted to the Lord Ordinary to remit the cause to the Sheriff, with this instruction, That he assoilzie the defenders, in respect there was no proper action brought upon the act of sederunt 40 days preceeding Whitsunday 1763, for removing them at Candlemas and Whitsunday 1764.

Act. *Da. Grene.*Alt. *Armstrong.**Fol. Dic. v. 4. p. 224. Fac. Col. No 138. p. 320.*1780. *January 19.*CARRUTHERS *against* M'GARROCH.

FOUND, that although full payment of all arrears before decree is a good defence against a removing on the act of sederunt, yet the landlord is not bound to accept of partial payments.

No 110.

In the same case, found, that debts of the landlord, or even public burdens affecting the farm, paid by the tenant without authority, will not be brought *in computo* to diminish the year's rent due by this tenant. See APPENDIX. See No 114. p. 13873.

*Fol. Dic. v. 4. p. 225.*1780. *January 19.*LORD ELIBANK *against* MARGARET HAY.

At the time of the death of Patrick Lord Elibank, in the month of August 1778, Margaret Hay, lessee of certain lands belonging to his Lordship, had incurred an arrear of more than a year's rent, which devolved to his Lordship's executor.

No 111.

Whether an arrear of a year's rent due to the landlord's executor entitles his heir to pursue an action of removing?

In the month of September following, George Lord Elibank, heir to Lord Patrick, commenced an action before the Sheriff of the county, against Margaret Hay, upon the act of sederunt 1756; by which it is, *inter alia*, provided, "That where a tenant shall run in arrear of one year's rent, it shall be lawful to the heritor, or other setter of lands, to bring his action before the judge-ordinary, who is hereby empowered and required to ordain the tenant to find caution for the arrears, and for payment of the rent for the five crops following, or during the currency of the tack, if the tack is of shorter endurance, within a certain time, to be limited by the judge; and failing thereof, to decern the tenant summarily to remove, and to eject him in the same manner as if the tack were determined, and the tenant had been legally warned in terms of the act 1555."

In support of this action,

The pursuer *pleaded*; In order to eject a tenant who had fallen in arrear, a landlord, before the year 1756, was obliged first to attach the whole stocking