ther, and could not have been in the view of the cautioners when they undertook the obligation. No 113.

By the above narrated clause of the bond nothing more is meant, than that in case the reasons of suspension should be found to be groundless, the landlord should be indemnified for the passing of the bill.

Answered, When the act of sederunt fixed upon the tenant's being a year's rent in arrear, as such a mark of his bankruptcy as to entitle the landlord to recover possession of his farm, or have better security for performance of the contract, it never meant to distinguish between the annual tack-duty and those prestations which are often of more importance, and on account of which its amount is diminished. The words "arrear and rent," which are used in the act of sederunt, comprehend every thing that is exigible by the landlord.

The act declares, that the bill shall be passed upon caution, "for implement of what shall be decerned for in the suspension or advocation, and damages and expenses." Now, the prestation might surely have been decerned for in the suspension. Besides, the word "implement" would not have been used if the payment of money only had been in view.

This is confirmed by the clause in the bond stated in the narrative.

THE LORD ORDINARY, and the Court, by their first interlocutor, (19th December 1792), decerned against the cautioners for damages, on account of the tenant's not having fulfilled certain prestations due before their bond was granted.

But, upon advising a reclaiming petition and answers, the LORDS found, "that the petitioner's bond of cautionry extends only to the rents and arrears of rent, and conversion of kain specified in the libel of removing before the Sheriff, and decreet thereon." It was at the same time observed by some of the Judges, that independent of the terms of the libel, and decree, the act of sederunt applies only to liquid annual payments, and not to illiquid prestations.

A reclaiming petition was refused, without answers, on the 21st May 1793.

Lord Ordinary, *Justice-Clerk.* Act. *Geo. Fergusson, Cha. Hope.*
Alt. *Patison.* Clerk, *Menzies.*

D. D. *Fol. Dic. v.* 4. *p.* 225. *Fac. Col. No.* 37. *p.* 74.

1796. *July* 5. JOHN LOW *against* ANDREW KNOWLES.

No 114.
The act of sederunt 1756, § 5. does not apply, unless the tenant be a full year's rent in arrear at the date of

JOHN LOW held a lease of a farm, granted in favour of assignees. One half of the rent was payable on the 20th December, and the other on the 20th June, for the crop preceding.

Low assigned the lease to Alexander Wilson, who again assigned it to Andrew Knowles; and he reaped the crop, and was liable for the rent of the year 1793.

No 144.
the decree; but the landlord is not obliged to accept of partial payments.

See No 119.

On the 26th June 1794, Low applied to the Sheriff, to sequestrate Knowles' effects, for payment of the rents for crop 1793 and 1794; and on the same day he instituted an action against him, on the act of sederunt 1756, concluding, that he should be ordained to find caution for arrears, and the rent of the five subsequent crops, or to remove from the farm. Wilson, who had received a partial payment from Knowles, had previously become bankrupt.

Low paid the rent to the landlord for crop 1793 in July 1794.

The sequestration, which was at first granted by the Sheriff, was recalled, on Knowles finding caution for the rents for 1793 and 1794. But the other action was afterwards insisted in; and decree of removing was ultimately pronounced by the Sheriff in February 1795; by which time Low had recovered payment of the rent for crop 1793, from the cautioner in the sequestration, from whom, likewise, in October 1795, he got the rent for crop 1794.

In an advocation, besides an argument on the whole circumstances of the case, two general questions occurred; *1mo*, How far, where a lease is granted to assignees, the original tenant, after assignation, continues liable to the landlord for the rent, and, consequently, has any title to insist in a removing against the assignees? And,

2do, Whether payment of arrears, before decree, does not render further procedure on the act of sederunt incompetent?

The Court considered the first question to be attended with difficulty, and one upon which there was no precedent; the opinions of Lord Bankton, B. 2. T. 9. § 14.; and Mr Erskine, B. 2. T. 6. § 34. (it was observed) who think the cedent still liable, being founded entirely on an observation incidentally made by the Court, in the case Grant against Lord Braco, reported by Kilkerran, 24th February 1743, *voce* TACK, which was decided on other grounds.

The Court, however, had no occasion in this case to determine the point.

On the second question, the pursuer *contended*, That the act of sederunt gives the heritor, "or other setter of the tack," upon the tenant's becoming a year's rent in arrear, a right to insist that he shall find security for arrears, and five subsequent crops, in general terms, without making any exception in his favour, on his afterwards paying the arrears; and that the contrary doctrine would destroy the effect of the act of sederunt, as a bankrupt tenant might contrive to make a partial payment, although he could not find security for his future punctuality, which was the chief object of the act of sederunt.

The defender *answered*, That the penal consequences of the act of sederunt could not be meant to apply irrevocably, wherever the term of payment was a few days perhaps elapsed; and that therefore the caution found in the sequestration, and still more the payments made by the cautioner, prevented their operation in this case.

THE LORD ORDINARY found, that the act of sederunt applied, in respect "that at the commencement of the process a full year's rent was resting unpaid by the defender."

Upon advising a reclaiming petition, with answers, the Court were of opinion, that to found a removing, under the act of sederunt, the year's rent must be due likewise when the decree is pronounced, Campbell against Robertson, No 108. p. 13867.; but it was at the same time observed, that the landlord is not obliged to accept of partial payments. No 114.

THE LORDS (11th March 1796), assoilzied the defender; and to this judgment, upon considering a second petition, with answers, they almost unanimously "adhered."

Lord Ordinary, *Eskgrove.* Act. *John Clerk, Ar. Campbell,* jun. Alt. *Baird.* Clerk, *Gordon.*

Fac. Col. No 229. *p.* 532.

1804. *June* 30. CAMERON *against* MACDONALD.

No 115.
An action of removing, upon the act of sederunt 1756, not competent in the first instance before the Supreme Court.

MR CAMERON of Lochiel presented a bill for leave to raise summonses of removing against several tenants upon one diet of six days. It was granted as a matter of course.

A summons of removing was in consequence executed against Alexander Macdonald, tenant of Auchintore, who objected to the competency of the action, as proceeding on the act of sederunt 1756, which authorises removings, in terms of it to be brought before the Judge Ordinary of the bounds, and not before the Supreme Court. In support of this objection it was

Pleaded, There are various actions which pass under the name of actions of removing, extremely different both in the conclusions, and the *media concludendi*. Every possessor of land may be summoned to remove; in support of which, there may be as many grounds for removing as there are titles on which to acquire, or pretences on which to retain property. But a removing, under the act 1756, must be brought at the instance of a landlord for the removing of his tenant, previously in possession by a tack, and seeking to retain possession, because the right acknowledged once to have belonged to him is not extinguished. It is to this species of removing alone that this act refers. If, again, one heritable proprietor succeeding another by a singular or universal title, by purchase, for instance, or as heir, desires to remove from the lands, the seller, or the connections of the deceased, he may bring his action before the Court, upon the common law, without resorting to the act of sederunt. In the same manner, when a tenant for life dies, his heir, and all belonging to him, may be removed by an ordinary action. But in the case of removing a tenant, it is incompetent to adopt any other method than that prescribed in the statute 1555, or the act of rederunt 1756, which has been alternatively substituted in place of the former. Now, one of the requisites of the act of sederunt is, that the action shall be called before the Judge Ordinary at least forty days before Whit-