and that he ought to have the management and direction of his own means and affairs.

In this process, he produces several testificates, that he has reconvalesced; and there being no compearance for the nearest relations called, craved a commission for proving his reconvalescence; insisting particularly on this ground, that he had attained to an old age of seventy years, or thereby, and was not fit to travel, and that his reconvalescence was notourly known in the shire of Nairn, where he lived, which was of great distance.

The Ordinary thought fit to report a matter of that importance to the whole Lords; who having considered and reasoned upon the case, granted commission for proving that the pursuer was habit and repute *rei sui providus*, and reconvalesced; but refused to grant a commission for proving that he was reconvalesced, and *rei sui providus;* and found, that he being cognosced idiot by an inquest, he ought to be sisted in their presence, and cognition taken upon proper knowledge that he was now convalesced, and that the evidence that should appear to them, upon inquiry, and discoursing with him, should be advised with a report of the said commission, that he was habit and repute *rei sui providus*, before they would proceed to reduce the verdict of the inquest, finding that he was idiot.

No. 31, *page* 39.

1701. *December* 30. DAVID FRENCH, *against* ARCHIBALD ROBERTSON, Factor for the estate of Carden.

IN the count and reckoning, at the instance of David French, purchaser of Carden, the pursuer charges the factor with annual-rent of his yearly intromission, within a year after the same fell due, conform to the Lords' Act of Sederunt last July, 1690.

It was ALLEGED for the factor,—No such Act of Sederunt was intimated, or in the least known to him, nor is it in observance; neither could he be obliged to lend out his intromissions, seeing he made frequent payments by the Lords' warrants, and was obliged to keep a stock of money to answer the same.

It was ANSWERED,—That the of Act Sederunt was opponed, which is founded upon natural law and equity, laid down by the Lords, as a constant and fixed rule to be observed in all time coming, as has been frequently done by their predecessors, and was peculiarly proper to be done in relation to the management of estates sequestrated by the Lords' authority; and they having resolved and determined, that all factors of their nomination, should be liable to annual-rent, there needed no special intimation to any factor. And it is without ground to allege, that the act is in desuetude; for, though many factors do too frequently manage creditors in such manner as they are not brought to exact accounts, yet the Lords did never give any countenance to such practices: and, if this factor were not made liable for annual-rent, then no other factor could be ever liable in any time coming; and such a decision would weaken the authority and respect that is due to Acts of Sederunt.

The Lords found the factor liable for annual-rent, conform to the Act of Sederunt.

No. 32, *page* 40.

1715. *July* 20. SIR THOMAS WALLACE of Craigie, *against* The TACKSMEN of his Salt-pans.

SIR THOMAS WALLACE set his salt-pans for twenty-one years, with a provision, that either party should be free at the end of ilk seven years, upon forty days premonition before the last term of the freedom; and the entry to the tack was at Martinmas 1708.

Sir Thomas premonishes the tacksmen, upon the 28th of April 1715, that they should remove at Martinmas thereafter, and thereupon pursues a removing.

The defenders ALLEGED,—That they ought to have been warned forty days preceding Whitsunday, conform to the act of Parliament 1555.

It was ANSWERED,—1*mo*, That act is introduced only in favours of labourers of the ground. 2*do*, The entry was at Martinmas, and the tack provides premonition to be forty days preceding the term of freedom, that is, the term at which each party was to be free.

The Lords repelled the defence.

The defender further ALLEGED,—That the tack contained another clause, in these words:—" That, in case at the first, or any other freedom during the said " tack, Sir Thomas should not incline to keep the tack in the terms above men- " tioned, that he obliged himself to stand to the determination of two indifferent " men, mutually to be chosen by him and the tacksmen, as to what augmenta- " tion or tack-duty they should be obliged to give during the space of the next " freedom; and in case of variance betwixt the arbitrators, an oversman was to " be chosen by them."

From this clause it was ALLEGED,—That though the warning were sustained, the tacksmen could not be removed, but they were only obliged to submit to arbiters, what further tack-duty they should be obliged to pay till the next freedom.

It was ANSWERED,—The clause can never be interpreted to enervate the former, by which it is expressly provided, that either party shall be free at the end of seven years. And it can never be the meaning of a clause in the same paper, that Sir Thomas shall not be free, but only bound to submit what augmentation shall be granted; which submission again would come to nothing, for the defender can name such arbiters as will never comply, either in the decision or the choice of an oversman. 2*do*, It were very unjust and an unequal clause, that the tacksmen should be always free, and the setter stand bound to his tacksmen; and, therefore, the clause must receive any interpretation, rather than be reckoned inconsistent with the former clause, and with equity. And the clause is capable of this sense, viz. That Sir Thomas might take the tack in his own hand, and manage it by his own servants; but that, if he think fit to grant a tack of that subject, the tacksmen shall have the first offer, to which he agrees.

than a competent stipend. And further, the right of superiority being annexed to the crown, the patrons had reserved to them the feu-farms, and feu-mails of the