

cause was rested on this principle, That in a lease of no greater endurance than nineteen years, neither assignees nor subtenants were admissible, unless in virtue of a special paction.

No. 170.

The interlocutor of the Lord Ordinary was in these terms :

“ Having considered the principal tack libelled on, which sets the farm for nineteen years to James Wilson, secluding his heirs, adjudgers, executors, and assignees, without mentioning subtenants, but allows him to assign the tack to his wife, in case she survives him, and which farm she accordingly subset to the defender, Adam Litster, for the remaining years of the tack ; therefore sustains the defence,” &c.

After advising a reclaiming petition, with answers, a hearing was ordered on the general point ; and the Court, by a considerable majority, altered the interlocutor of the Lord Ordinary.

The Lords found, “ That Margaret Proudfoot, the defender, had no right to grant the sublease under reduction ; and therefore reduced the same.”

Lord Ordinary, *Justice-Clerk.* Act. *Wight, Rolland, Geo. Fergusson, Geo. Robertson.*
Alt. *Dean of Faculty, Macintosh, Ro. Craigie.* Clerk, *Sinclair.*

C.

Fol. Dic. v. 4. p. 325. Fac. Coll. No. 17. p. 29.

1791. *March 8. EARL OF PETERBOROUGH against WILLIAM MILNE.*

Lord Peterborough granted to Robert Shand a missive of tack, as follows : “ I hereby agree to give you a lease of the farm of Essie and Pilmuir, &c. for the space of nineteen years ; for which you are to pay me £.60 of yearly rent, in terms of the articles and regulations established by me on the estate of Durris, and to which reference is hereby had. And you are to enter into regular and formal tacks with me, on stamped paper, when required, under the penalty contained in the said regulations.”

No. 171.
Subsetting
not permitted,
when that power is
not specially
granted.

Those regulations, which related chiefly to the terms of payment of the rent, to certain reservations in favour of the landlord, to burdens imposed, or privileges conferred, on the tenants, and to the modes of culture, comprehended no express permission or prohibition of subsetting ; although, in one part of them, mention was made of “ tenants and sub-tenants ;” and, in another, of tenants, as distinguished from possessors.

In one instance of a lease on this estate, which was formally executed, it appeared, that a special power of subsetting was given ; but all the other farms, of which there were several, were held under such missives as that stated above. It was, however, admitted to be customary for the tenants to let small portions of their lands to sub-tenants.

Shand having subset his farm to Milne, an action of removing was brought by Lord Peterborough against the latter, as holding possession without any proper authority ; the missive of tack not containing a power to subset.

No. 171. Pleased for the defender : Though it were admitted that, in the case of a formal lease, the power of subsetting, if not expressed, would not be implied, this would not determine the present question. Here, an obligation is created to enter into a future regular contract of lease, in terms of the regulations referred to, wherein, from the use of the term "sub-tenants," the right of subsetting seems to be implicated.

Answered : By no such reference could a right to subset be conferred, nor by any usage, however uniform. It was necessary, either that this power should have been contained in the missive or tack ; or, at least, that it should have been expressly and specially mentioned in the deed referred to. This is plainly in consequence of the principle established in the case of Alison, No. 170. p. 15290.

The Lord Ordinary, "in regard it did not appear that the principal tenant had powers to subset his farm, decerned in the removing."

On advising a reclaiming petition, and answers, the Court altered the Lord Ordinary's interlocutor, "and assoilzied the defender from the removing."

Afterwards, however, a petition against this interlocutor having been presented, and followed with answers,

The Court returned to the judgment of the Lord Ordinary, "and decerned in the removing."

Lord Ordinary, *Stonefield*. Act. *Dean of Faculty*. Alt. *G. Fergusson*. Clerk, *Colquhoun*.
S. *Fol. Dic. v. 4. p. 329. Fac. Coll. No. 175. p. 357.*

1791. June 30. LAIRD *against* GRINDLAY.

No. 172.

The tacksman of a mill, whose lease excluded subtenants and assignees, having died bankrupt, his heirs were found not debarred from committing the charge of the subjects to an overseer, with power to uplift the multures, &c. and to hold count to them for the same, for the behoof of the tacksman's creditors. See APPENDIX.

Fol. Dic. v. 4. p. 325.

1794- May 22.

WILLIAM SIMSON *against* DAVID GRAY and JOHN WEBSTER.

No. 173.

A power of subsetting is implied in a lease of land for thirty-eight years.

David Gray possessed a farm, on a lease for thirty-eight years, in favour of himself, his heirs and executors. Having granted a sublease of it to David Webster, William Simson, the landlord, five years afterwards, brought a process in order to set it aside, in which he disputed the tenant's right of subsetting, and