

No. 171. Pleaded 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

Pleaded: Formerly, when leases, like feudal rights, were so strictly personal to the tenant, that he could not, in the common case, transmit them even to his heir-at-law, without an express clause to that purpose, it might have been doubted how far, in the case of a lease for a period far exceeding the ordinary duration of human life, a power of subsetting was not implied; but as leases now descend to heirs, unless expressly excluded, and the *delectus* supposed in the contract is confined to the family, rather than to the person of the lessee, there seems no reason why the duration of the lease should have any effect on the power of transferring it. Indeed, if it were to be established as a general rule, that a right of subsetting is implied in every case where the landlord must have laid his account with a change in the person of his tenant, his age, and the other circumstances of his situation, must, in every case, be taken to the account, as well as the duration of the lease. It is a fixed point, that a power of subsetting is not implied in a lease for nineteen years; *Alison against Proudfoot*, No. 170. p. 15290.; neither should it in the present.

The Lord Ordinary repelled the reasons of reduction, "in respect it cannot be supposed, that the representer (pursuer) and his factors were unacquainted, for five years together, how and by whom the farm libelled was possessed."

The Court, upon the general ground, that a power of subsetting is implied in a lease of thirty-eight years, unanimously "refused" a reclaiming petition, without answers.

Lord Ordinary, *Stonesfield*.

For the Petitioner, *R. Craigie*.

Clerk, *Simclair*.

*D. D.*

*Fol. Dic. v. 4. p. 329. Fac. Coll. No. 117. p. 260.*

1798. *November 20.*

GEORGE DEUCHAR *against* LORD MINTO, MARY PETER, and her CURATORS.

Lord Minto, in 1788, let a farm for nineteen years to John Peter and his heirs only, secluding assignees and subtenants voluntary or legal.

John Peter had a son, James, and two daughters, the youngest of whom was married to George Deuchar.

In 1794, John Peter executed an assignation, by which he conveyed the lease, at his death, to his son, in life-rent, and, after his decease, to George Deuchar, his heirs and successors.

At the date of this deed, James, the son, was married, and had an only child, Mary Peter.

John Peter died in 1794, and was succeeded in the lease by James, who died in 1796.

On his death, George Deuchar brought a removing before the Sheriff, founded on his father-in-law's assignation, against James's daughter, Mary Peter, who, in defence, contended, that the deed was void, the lease excluding assignees.

No. 174.

A clause in a lease "secluding assignees," found to prevent the lessee from conveying it to his son-in-law.