

The entry of the subtenant to the arable land was declared to be at the separation of crop 1796 from the ground.

Mr. Rolland having previously let part of the lands for crop 1796, for tillage, with power to the tenants to carry the fodder off the farm, the Earl of Northesk, now the landlord, and his factor, in August 1796, presented a petition to the Sheriff of Forfarshire, stating the fact, and also that Mr. Rolland did not intend to consume on the farm that part of the crop which remained in his own hands. The petitioner, therefore, prayed that Mr. Rolland and his tenants might be prohibited from carrying off any part of the fodder from the farm.

The Sheriff found, "that an outgoing tenant is entitled, unless restricted, to remove or sell his crop, and assolzied the defenders."

In an advocacy brought by the pursuers, in which they founded on the case Pringle, No. 24. p. 6575. *voce* IMPLIED OBLIGATION, the Lord Ordinary "decerned in terms of the libel before the inferior court."

The defenders, in a reclaiming petition,

Pleaded: From the great length of the original lease, and from its being granted to assignees and subtenants, it must have been foreseen by the parties, that it would be frequently transmited. And as a tenant has power to carry off the crop which precedes the expiration of his lease, so in this case it must have been an implied condition, that the tenant was to have power to carry off the fodder of that crop with which his possession was to end, in consequence of a sub-lease or assignment. Nor can the landlord suffer by this, as the new tenant will, for his own sake, take care to bring with him manure sufficient for the proper cultivation of the farm, for his first year's occupation of it.

Observed on the Bench: The original lessee could not have carried off the fodder of the crop in question, and his assignee or subtenant can have no higher right. Were the doctrine of the petitioners well founded, the fodder might be constantly carried off, by means of annual sub-leases.

The Lords refused the petition, without answers.

A second reclaiming petition was also refused, (21st February) without answers.

Lord Ordinary, *Stonefield*.

For Petitioners, *H. Erskine, Corbet*.

Clerk, *Colquhoun*.

Fac. Coll. No. 15. p. 36.

1804. January 31.

HERRIOT *against* FAULDS.

In the year 1799, Alexander Heriot let to Andrew Faulds the whole coal in his property of Maryston, in the vicinity of Glasgow. The lease was to endure till the coal should be entirely wrought out; and very ample privileges, of sinking pits, erecting engines, &c. were granted to the lessee; but no express power of charring coal was contained in the tack. The lessee, on the other hand, was to take the sole risk of making a search for the coal.

No. 134.

the farm the fodder which had been raised on it the crop preceding the entry of the sub-tenant,

No. 135.

In a tack of coal, the privilege of charring is not implied.

No. 135. Faulds having, at very considerable expense, discovered a seam of coal, and erected machinery, proceeded to raise it, and reduce it to the state of char, by burning it in large heaps near the mouth of the pit, for the purpose of supplying the Clyde Iron Company with that article. To this operation Herriot objected, as a nuisance to his house and garden, in the vicinity; and having applied to the Sheriff, he obtained an interdict.

The case having been brought before the Court of Session, the Lords (14th June, 1803,) found the lessee entitled to char, chiefly, as it appeared, on account of the very broad and extensive nature of the right granted by the lease, without recognising any right at common law.

But afterwards, their Lordships, (20th December, 1803,) upon advising a reclaiming petition, with answers, altered their interlocutor, and remitted the cause *simpliciter* to the Sheriff. On this occasion, it seemed to be the opinion of the Court, that in no case could the privilege of charring be exercised by a tenant, contrary to his landlord's inclination, unless there was an express permission in the lease.

And a reclaiming petition for Faulds was refused, without answers.

Lord Ordinary, *Craig*,
Alt. *A. Bell*.

Act. *Dickson*.
Agent, *R. Cathcart, W. S.*

Agent, *C. Oliphant, W. S.*
Clerk, *Menzies*.

J.

Fac. Coll. No. 141. p. 319.

SECT. VIII.

Obligations incumbent on Tenant

1623. February 28. L. RANDIFUIRD *against* CROMBIE.

No. 136.
Tacksman
must enter,
to stock and
possess the
ground.

Randifuird, setting a tack to one of his tenants of certain lands, for the space of 9 years after his entry, which, by the tack, was appointed to be at Martinmas 1622, pursues, by way of action, the tacksman to enter to the room, and labour the same, which action is intented in January, 1623, after the term of entry appointed by the tack. The defender compears, and alleges, that this action is a novelty, and ought not to be sustained; for albeit the tack was set to him of the room, yet he ought not to be compelled to enter thereto, or labour the same, but at his own pleasure; for if he should never enter nor labour, or if he should suffer the same to lie lea for grass, it was alike to the pursuer; for he could have no action upon the tack against the defender, but for the tack-duty, which the pursuer could not ask but after the terms of payment of the tack being past, at