

1787. February 23. JAMES MILN, *against* DAVID MITCHELL.

No. 132.

A tenant not entitled to set up an ale-house on his farm.

Mr. Miln, the proprietor of a barony, his charter containing in the *tenendas* the common clause *cum breueriis*, brought an action in that character, before the Judge-Ordinary, against Mitchell, one of the tenants of the barony, who had set up an ale-house on his farm, for "prohibiting him either to brew or sell ale or spirituous liquors on any part of the lands."

Decreet having been given in terms of the libel, a bill of advocation was presented. The Lord Ordinary "refused the bill; upon which Mitchell reclaimed to the Court.

The Court, without seeming to pay attention to the pursuer's claims as a baron, were of opinion, That the tenant was here attempting to make such an use of the property let to him as was not warranted by his tack, and such as in itself ought to be discouraged.

They therefore refused the petition, which had been appointed to be answered.

Act. Dean of Faculty.

Alt. Ja. Clerk.

Clerk, Orme.

S.

Fol. Dic. v. 4. p. 328. Fac. Coll. No. 324. p. 498.

1795. June 2.

CAMPBELL *against* CAMPBELL.

No. 133.

The Lords found, that a tenant was not entitled to cut sea-ware for the manufacture of kelp, although the lease gave him the lands, with "parts, pendicles, and universal pertinents thereof, used and wont," and although a proof was offered, that he and the former tenant had been in use to cut and manufacture the sea-ware.

Fol. Dic. v. 4. p. 326.

* * * This case is No. 26. p. 9646. *voce* PART AND PERTINENT.

1797. February 2.

The EARL of NORTHESK and FACTOR *against* PATRICK ROLLAND and Others.

No. 134.

A tenant who had a lease for fifty-seven years, with power to subset or assign, having granted a sub-lease, was found not entitled to carry off from

In 1763, the proprietor of the farm of Cairnton granted a lease of it for fifty seven years, to John Johnston, "his heirs, successors, assignees, and subtenants."

The lessee became bound "to labour, manure, and sow the lands hereby set sufficiently," and also to follow a particular mode of cultivation during the last seven years of the lease.

The farm was repeatedly subset, and Patrick Rolland having, in February 1796, obtained an assignation to the principal lease, he, in April thereafter, granted a sublease of a great part of the lands for the whole period of his own right.