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.

No. 134. the farm the fodder which had been raised on it the crop preceding the entry of the sub-tenant.

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 assoilzied the defenders."

In an advocation 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.

No. 135. In a tack of coal, the privilege of charring is not implied.

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.