

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