

which time the defender should answer him, as reason and law required. The Lords repelled this allegiance, and sustained the action against the tenant to cause him to enter to the occupation and labouring of the room, that thereby the defender might enter and plenish the same with goods and corns, whereby the ground might be more answerable to the master for payment of the duty of the tack.

No. 136.

Act. *Mowat.*Alt. *Oliphant.**Fol. Dic. v. 2. p. 424. Durie, p. 52.*

\* \* Haddington reports this case :

A tack being set by Randifuird to Crombie, the entry to be at Martinmas 1622, Crombie was pursued to enter, and labour the ground. He excepted, That he was not bound to enter and labour, but to pay the duty. I reasoned, That the acceptation of the tack made him have right to enter, and so denuded the setter, that could neither lawfully labour himself, nor set it to any other, and that the defender might be compelled to enter and labour the ground, to the effect the crop and goods might be poindable for the duty, and the setter not forced to want, by leaving his lands waste, and only to have a dyvor tenant to crave by personal action; which opinion was allowed by all the Lords.

*Haddington MS. No. 2790.*


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1633. February 6. LD. HADDO *against* JOHNSTON.

A tenant being pursued for tilling the grass, and riving out the ground that should be in pasture, and burning the moss, after he was warned to remove, pleaded, That he was not restricted by any paction, and might labour the land as he pleased; which was repelled, and action of damages sustained, and a commission granted for cognoscing the same.

No. 137.

*Fol. Dic. v. 2. p. 424. Durie.*\* \* This case is No. 252. p. 7539. *voce* JURISDICTION.

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1665. February. MURRAY *against* BALCANQUAL.

Sir Andrew Murray of Pitlochrie having set a tack of a room to James Balcanqual, his tenant, for certain years, the said James has not only tilled the swaird of some parts which were never laboured before, but has over-limed it so, that, if he continue, he will render the room altogether unprofitable to his master after the expiring of the tack; and therefore convenes him for damage, and to desist. It was

No. 138.

A tenant  
must labour  
*tanquam bonus*  
*pater familias.*

No. 138. alleged by the defender, That he being the tenant, might, during the tack, labour the room for his own advantage any way he pleased, not being otherwise provided by the tack. Replied, That the defender, being a tenant, ought to labour *tanquam bonus pater familias*, and as tenants are in use to do, not to destroy the ground in the end, but to labour it so as that it may return to the master in a reasonable condition; else tenants, if they should be suffered to labour as they will, may destroy the very substance of the lands.

The Lords, before answer, ordained a trial to be taken of the way of the tenant's labouring, and condition of the ground, how it was, and is, and may be, by the way he labours.

*Fol. Dic. v. 2. p. 424. Gilmour, No. 194. p. 103.*

1707. December 20. WHITES against SIR JOHN HOUSTON of that Ilk.

No. 139.  
Tenant must repair the houses, and is entitled to no allowance for expenses laid out on them for his own accommodation.

These Whites, at their removing, having left the houses and mills ruinous, he takes a decret against them for £.280 Scots, in his own Baron-court, as the damage sustained by him; and, by pointing, obtains payment. They raise a reduction of this decret, and conclude repetition and re-payment. The decret being turned into a libel, there was an act, before answer, allowing a conjunct probation, what condition the houses were in at their entry, and how far deteriorated at their removal; and the testimony of the witnesses coming this day to be advised, it appeared, that, as to some of the houses, they were out of repair at their entry; but that £.18 or £.20 Scots would have made them sufficiently habitable, and wind and water tight; and that they were 200 or 300 merks worse at their out-going; but as to the other houses, they had meliorated and improved them considerably, for which they craved compensation, to elide the damages by suffering the other houses to fall into decay. The Lords found, That whatever reparations or meliorations a country tenant made upon the houses, if habitable, for his own easier dwelling or accommodation, as striking out new windows, or glazing them, or making a halling to break the wind, &c. he could claim nothing on that account: The master was obliged to him, but he could not retain his rent on that pretence; neither could he demolish or take them away, which is allowed to one who builds on another man's ground, but not to tenants; and likewise found, by the nature of the contract of location and conduction, the tenant was bound to leave the houses in as good a condition as he gets them, and to uphold them during his stay, unless there be a particular paction derogating therefrom, such as the master's being obliged to furnish the couples and great timber, as the custom is in some places. But no such paction being alleged, the Lords took a middle course betwixt the probation led by either party, and modified the damages Sir John Houston had sustained, by leaving the houses at their departure in a ruinous condition, to 260 merks, turning the pounds in his decret