

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.*


---

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.

---

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.*