

No. 135. Faulds having, at very considerable expense, discovered a seam of coal, and erected machinery, proceeded to raise it, and reduce it to the state of char, by burning it in large heaps near the mouth of the pit, for the purpose of supplying the Clyde Iron Company with that article. To this operation Herriot objected, as a nuisance to his house and garden, in the vicinity; and having applied to the Sheriff, he obtained an interdict.

The case having been brought before the Court of Session, the Lords (14th June, 1803,) found the lessee entitled to char, chiefly, as it appeared, on account of the very broad and extensive nature of the right granted by the lease, without recognising any right at common law.

But afterwards, their Lordships, (20th December, 1803,) upon advising a reclaiming petition, with answers, altered their interlocutor, and remitted the cause *simpliciter* to the Sheriff. On this occasion, it seemed to be the opinion of the Court, that in no case could the privilege of charring be exercised by a tenant, contrary to his landlord's inclination, unless there was an express permission in the lease.

And a reclaiming petition for Faulds was refused, without answers.

Lord Ordinary, *Craig*,
Alt. *A. Bell*.

Act. *Dickson*.
Agent, *R. Cathcart, W. S.*

Agent, *C. Oliphant, W. S.*
Clerk, *Menzies*.

J.

Fac. Coll. No. 141. p. 319.

SECT. VIII.

Obligations incumbent on Tenant

1623. February 28. L. RANDIFUIRD *against* CROMBIE.

No. 136.
Tacksman
must enter,
to stock and
possess the
ground.

Randifuird, setting a tack to one of his tenants of certain lands, for the space of 9 years after his entry, which, by the tack, was appointed to be at Martinmas 1622, pursues, by way of action, the tacksman to enter to the room, and labour the same, which action is intented in January, 1623, after the term of entry appointed by the tack. The defender compears, and alleges, that this action is a novelty, and ought not to be sustained; for albeit the tack was set to him of the room, yet he ought not to be compelled to enter thereto, or labour the same, but at his own pleasure; for if he should never enter nor labour, or if he should suffer the same to lie lea for grass, it was alike to the pursuer; for he could have no action upon the tack against the defender, but for the tack-duty, which the pursuer could not ask but after the terms of payment of the tack being past, at

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.