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 decreet against them for £.280 Scots, in his own Baron-court, as the damage sustained by him; and, by poinding, obtains payment. They raise a reduction of this decreet, and conclude repetition and re-payment. The decreet 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 decreet

to merks, allowing and deducting the £.20 deponed on as insufficient when they entered; and decerned him to pay the superplus he had poinded for, more than this restricted modification extends to, being the third of the whole sum decerned for. No. 139.

Fol. Dic. v. 2. p. 424. Fountainhall. v. 2. p. 405.

1741. *June 5.* YORK-BUILDINGS COMPANY *against* ADAMS. No. 140.

A tacksman who was allowed a pretty large sum by his tack for putting the subjects in repair, and was obliged to keep them so, was found not bound to repair the damage done by an extraordinary accident, such as a hurricane.

Fol. Dic. v. 4. p. 326. C. Home.

*** This case is No. 63. p. 10127. *voce* PERICULUM.

1760. *December* 17. MACDOUAL of Glen *against* MACDOUAL of Logan.

No. 141.
Clause obliging the heritor to repay to the tenant, at the end of the tack, what sums he shall lay out out in building fences, is effectual, altho' the tenant purchase the lands during the curreney of the tack.

Johnston of Kelton, in 1727, set a tack of the lands of Whiteside, &c. to Macdoual of Glen, for twenty-six years. The tack contained a clause, by which Mr. Johnston bound himself, and his heirs, to repay to the tenant, and his heirs, whatever sums he or they should lay out in building and making profitable dikes and fences upon the lands, not exceeding the sum of £.50 Sterling, and that at the end of the tack; the said expenses to be vouched by the said John Macdoual and his foresaids their honest word allenarly.

In consequence of this clause, Macdoual built a number of dikes, to the extent of about sixteen hundred roods, which were all completed in the year 1730.

In 1731, Mr. Johnston sold the lands; and Macdoual of Glen, the tenant, became purchaser. The term when the tack expired was at Whitsunday 1754; and, soon thereafter, Macdoual of Glen brought a process against Macdoual of Logan, as representing Johnston of Kelton, for payment of £.50 Sterling laid out upon inclosing, agreeable to the clause in the tack.

Pleaded for the defender: These expenses were to be repaid at the expiry of the tack by the proprietor; because he was to reap the benefit. The pursuer is now heritor, and enjoys the advantage of the fences; and therefore must pay for them. By a part of this clause, the tenant is obliged to leave the fences in a good condition. It is evident, therefore, that this money was to be paid, in consideration of the advantage that would accrue to the heritor, by having the lands raised when the tack was at an end. This advantage is now fallen to the pursuer himself; and therefore he must pay for it. Had any third party become purchaser, he, and not the defender, would have been liable to implement this clause. The