

No 63.

tors. 3tio, From the clause in the tack, no such inference can be deduced, for this being a *bona fide* contract, must be constructed according to the usual meaning of parties; and as even in cases of ambiguity, the interpretation would go against the setter, in whose power it was *legem contractui dare*, it is plain, the tacksman's obligation can be no further extended than to such repairs as should become necessary, through the common and usual decay and waste of the materials; but surely, in no construction, can it be extended to comprehend an earthquake or hurricane, with the like of which, this climate never, or at least rarely, was ever affected.

THE LORDS found, that the tacksman ought to have allowance for the extraordinary damages sustained by the late hurricane, notwithstanding the allowance of a sum in the tack, for putting the houses in repair, and the obligation to keep them in repair during the currency of the tack; and allowed a conjunct proof as to the condition the houses were in when the tempest happened, and the extent of the damages. See TACK.

*Fol. Dic. v. 4. p. 62. C. Home, No 168. p. 282.*

1741. July 10.

CLERK against SIR JOHN BAIRD.

No 64.

A TACKSMAN of lands, whereon there was a little collection of houses, notwithstanding a clause in his tack obliging him to keep the houses in repair, was found not liable to repair the damage done by the hurricane, which happened on the 13th January 1739, as to such of the houses as were damaged to an extent exceeding the effect of storms in use to happen in this country; but as to such of the houses as were not damaged beyond what might be supposed to happen in an ordinary storm, he was found liable to repair.

*Kilkerran, (PERICULUM.) No 1. p. 376.*

1742. December 3.

EARL of EGLINTON, and his Curators, against The TENANTS of the Baronies of Kilmares, Robertson and Dreghorn.

No 65.

What damage sufficient to free tenants from payment of rent.

AN uncommon storm of hail having happened in the year 1733, in that corner of the shire of Ayr, where the above baronies lie, whereby great damage was done to the Tenants who possessed corn-farms, and the Earl's Curators not thinking it safe for them to give deduction of the rents without authority, they pursued the Tenants before the inferior court; and the Tenants, after proof led, brought the matter before the Lords by advocacy. At discussing whereof, it was found, "That no rent was due by such of the Tenants as had proved that they reaped no more than about the value of their seed and labour."

*Kilkerran, (PERICULUM.) No 2. p. 376.*