advising a reclaiming petition with answers, the Lords ordered memorials, and afterwards they adhered.

1775. *March* . WILLIAM CAMPBELL, Factor on Craigleith, *against* WILLIAM BROWNE.

HOUSES and offices are not contrived merely for the improvement of a farm, but are necessary for its occupancy: they are therefore considered as part of the farm; and it is established by usage, by common law, and the decisions of our Courts, that the tenant, if no special agreement is made to the contrary, is obliged to uphold them in a sufficient habitable condition during the currency of the lease, and to leave them so at his removal, or, at least, in as good condition as he got them. See Dict., *voce* Tack, V. II, p. 424.

It has been made a question, how far a similar obligation, at common law, lies upon a tenant with regard to those fences and inclosures which are upon his farm at the time when he enters to it. That he is bound to commit no waste upon his farm, is clear. (See Planting and Enclosing, *Stirling of Keir* against *Christie.*) And further, that, by the statute 1698, cap. 16, he is bound to preserve the trees and planting upon his farm, is equally clear; but still it remains a doubt, how far he is bound to be at actual expense in supporting inclosures; unless he comes under a special and actual obligation to that effect.

This point occurred in a question betwixt William Campbell, factor on the sequestrated estate of Craigleith, and William Brown, the tenant. The Lords remitted to the Ordinary, to pass a bill of advocation at the tenant's instance, in order that the point might be tried, along with certain other reasons upon which the tenant pleaded retention of his rent, and might receive a deliberate discussion; but this did not take effect, the question having been determined, not upon the footing of the common law, but upon a clause in the tack, which, though very indistinct, the Lords found laid the expense on the master.

In the case of—

1762. *November* 19. STIRLING of KEIR *against* CHRISTIE,

Lord Alemoor, Ordinary, pronounced the following interlocutor:—"That, as there are no limitations in the defender's tack, with respect to the method of cultivating the ground, the defender was at liberty to alter the usual manner of culture, provided that he did not thereby deteriorate the farm; and finds no sufficient proof that the ground was deteriorated by last crop: but finds it was unlawful and irregular in the defender to carry off his dung and fodder from the farm of Netherton, from Whitsunday 1759 to Whitsunday 1760, which dung ought to have been laid upon the ground for crop 1760; and finds him liable in 40s. as the value of the dung."

Upon a reclaiming petition, the Lords found the tenant liable in £6, instead of 40s.

In a case between

1785. The DUKE of ROXBURGH *against* ARCHIBALD,

The Sheriff of Roxburgh found, that the tenant was not at liberty to sell any of the straw that grew upon the lands: and the Lords refused a bill of advocation.

See the case of *Trotter* against *Finnie* in 1767,—Select Dec. P.

MESSENGER.

1776. *December* 20. WOOD and MASON *against* SKENE.

A MESSENGER having received from a debtor, whom he had apprehended, payment of ten shillings, as the fees of another messenger, who was his employer and doer for the creditors; the Lords found the same an undue and illegal exaction; although, in fact, the debtor granted bill for the ten shillings without objection, and that the fees exacted were not exorbitant nor more than ought. They considered the Act of Sederunt, 4th November 1738, as a most salutary and beneficial regulation, and highly proper to be kept in strict observance to bar every door against oppressions of this kind. It was proposed to have enforced this in the late regulations as to messengers, but it was struck out as unnecessary: reported by the committee to be already provided for by common law and Acts of Sederunt. At first the Lords talked of depriving the messenger, at least of suspending him. At last, however, they pronounced this interlocutor:—20th December 1776, "Find that the respondent acted illegally and unwarrantably; and therefore find him liable in the expense of this complaint, which modify to £3, and for the expense of extract. And, in respect it does not appear that the respondent meant to act fraudulently or oppressively, proceed to no further censure, and appoint a copy of this judgment to be transmitted to the Lyon-Court, in order that the same may be notified to the messengers, to deter others from committing the like illegal practices in time coming."

1778. *February* 27. ROBERT MONRO *against* ALEXANDER MACPHERSON.

IN a complaint of a similar nature, Robert Monro of Auchnagarl against Alexander Macpherson, messenger in Tain, the Lords seemed inclined to pro-