

1776. *February 23.* GEORGE THOMPSON *against* WILLIAM CADDEL and SONS.

TACK.

[*Supplement, V. p. 516.*]

MONBODDO. If there was no obligation on the landlord to repair, I should think that he was not bound to repair. When a tenant takes possession of a particular farm, he takes it as possessed by the former tenant.

COVINGTON. Doubts as to the general doctrine laid down by Lord Monboddo, but thinks that in this case the master is not bound to repair.

KAIMES. Giving possession of a house is as necessary, from the nature of the covenant, as giving possession of the land. It is implied in the covenant that the tenant shall have possession, and shall have a house to live in. But here there is a special covenant. The repairing of the houses was a circumstance that could not have been overlooked: the omission therefore must have been intentional.

JUSTICE-CLERK. From the nature of the grant the general lessees had right to all obligations of outgoing tenants. I must presume that the outgoing tenants were bound to keep the houses in repair; for that is a common obligation on tenants all over Scotland. The lessees therefore must be presumed to have taken the houses as they were, or as the former tenants were bound to make them. It is plain that the intentions of the lessors were to stipulate a nett sum. The English creditors could not know the extent of the burdens, but the lessees did.

COVINGTON. I doubt greatly as to the grounds on which Lord Monboddo put this case.

On the 23d February 1776, "The Lords sustained the defences and assoil-yied;" adhering to Lord Auchinleck's interlocutor.

*Act.* R. M'Queen. *Alt.* J. Swinton.

1776. *February 29.* ELIZABETH KIRKLAND and OTHERS, *Petitioners.*

TAILYIE.

Entail of houses within burgh—Registration of entails.

DAVID Cunninghame, baker in Edinburgh, executed three deeds: By the first, he disposed to David Cunninghame, his only son, and the heirs whatsoever of his body; whom failing, to his eight daughters, equally, share and share alike, and the heirs whatsoever of their bodies, respectively, a house and shop, part of a Temple tenement in the city of Edinburgh. By the second deed, Mr