

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 advocacy.

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-

ceed to a high censure ; but, the messenger having candidly acknowledged the facts upon which the complaint proceeded, and pleaded ignorance of the Act of Sederunt, and sentence against Ross, 4th November 1738, which had never come to his knowledge, they mitigated their sentence, and ordered repetition of the fees exacted, and found the messenger liable in expenses. To prevent the like in time coming, they ordered a copy of the Act of Sederunt 1738 to be transmitted to the Lyon-Court, and to be recorded in their books ; which, though ordered at the time, it seems had not been done ; and also to every Sheriff. But, in other instances of complaints, upon this Act of Sederunt, where they are groundless, the Lords have dismissed them with expenses. Thus, in a complaint on the Act of Sederunt 1738, *William Shaw, bookseller*, against *James Watson, junior, messenger*, the Lords, 27th February 1778, dismissed the complaint, and found the messenger entitled to expenses.

They did the same, 23d June 1778, *Alexander Christie, vintner in Dumfermline*, against said *Mr Watson*.

1778. July 29. MACDONALD *against* MACISAAC.

ALEXANDER Macdonald, writer to the signet, having employed MacIsaac, messenger at Campbelltown, to execute a caption against a gentleman in that neighbourhood, the messenger delayed ; and, though he owned receipt of the caption, did not own receipt of Mr Macdonald's letters, ordering him to put it into execution. On a summary complaint, at Mr Macdonald's instance, to have him censured and made liable for the debt, the Lords ordered the complaint to be served, and the messenger to answer against November. Lord Covington and Lord Westhall demurred as to the competency of this complaint, but the other Lords thought it competent. There have been several similar instances, particularly of one Graham, a messenger at Lochmaben, and several others. See Summary Application.

The EARL of HOME *against* NASMYTH.

NASMYTH, Creditor to the Earl of Home, sent (August 1774,) a procurator, with a notary, messenger, and _____, to poind the furniture of Hirsell, for a debt of L.333 due by bond. Captain Elphinston interfered, and prevented a poinding, by giving a draught on his banker at Edinburgh for the money. The procurator insisted for L.36 of expenses, or to poind for the penalty. To prevent this a draught was given for this sum also ; out of which the procurator, notary, messenger, and concurrents were paid. A complaint was given in complaining,—*1mo*, That the account was most exorbitant ; *2do*, That exacting expenses from the debtor was contrary to Act of Sederunt 1738. It was ANSWERED,—That the account was moderate, and was settled without objection. *Secundo*, The notary, and messenger, and concurrents, exacted nothing. It was