also in the circular issued by the trustee. But there is no mention of it in the offer of composition.

The other Judges concurred.

The Court adhered.

Agent for Pursuer—William Officer, S.S.C.
Agent for Defender—Lindsay Mackersy, W.S.

Wednesday, May 29.

SECOND DIVISION.

MARIANSKI *v.* JACKSON.

Landlord and Tenant.

Circumstances in which a tenant found entitled to have two rooms lathed and strapped for him by his landlord.

This was an appeal from a decision of the Sheriff and Sheriff-Substitute of Lanarkshire, in a question between a tenant of a dwelling-house and his landlord, as to what constituted necessary repairs to be made by the landlord. The question arose on a petition presented, on 5th April 1871, by D. O. Marianski, to the Sheriff of Lanarkshire, stating that by lease, dated the 12th day of November 1866, the respondent let to the petitioner the house of Greencroft with garden and park for 19 years, at a rent of £40 sterling per annum, from the term of Whitsunday 1868. That on or about said term of Whitsunday 1868, the petitioner entered into possession of said house, and had expended several hundred pounds in improving the grounds. That said house was neither wind nor water-tight, and generally was out of repair. That the petitioners during the last six months, had made repeated demands on the respondent to put the house in repair, so as to be habitable, but the respondent persistently refused to do so. That in January 1871 the petitioner raised a summons against the respondent in the Small-Debt Court at Hamilton, and got decree against him for £4 in name of damages; that still the respondent refused or delayed to make the necessary repairs. The petition prayed the Sheriff to ordain the respondent forthwith, and at the sight of a man of skill, to put the house in a tenantable and habitable condition.

The respondent put in two defences to this petition—(1st) That the present action had been already disposed of by the small-debt action in which the Sheriff decerned for £4 in name of damages, and which constituted *res judicata* in the case; and (2d) Supposing the action has not been already disposed of, the damp referred to in the petition as on the back wall of back sitting room, rises from the foundation of the house—the wall not being strapped and lathed; that the respondent was willing to make certain alterations, and that the petitioner occupied the house from Whitsunday 1868 till February 1870 without objection.

The Sheriff-Substitute (SPENS), by interlocutor of 28th April 1871, repelled the preliminary pleas, and remitted to J. Findlay, builder, to examine the premises, and report whether they are in a fit and proper state of repair, and, if in his opinion they are not, what repairs he would think it necessary should be done by the landlord to put them in a proper, habitable, and tenantable condition. Mr Findlay made three reports upon these premises. In the first and second reports he suggested that the walls of the front bed room and back sitting room should be lathed and strapped; and stated his opinion that without the lathing and strapping of the walls of the front bed room the house would not be in a good tenantable condition.

Upon consideration of this report, and after himself inspecting the premises, the Sheriff-Substitute, on 10th August 1871, pronounced an interlocutor, finding that the petitioner was not entitled to require the respondent to execute operations upon the premises other than repairs, and that he was not entitled to demand that alterations, amounting to material improvements, should be made.

In a Note the Sheriff explained that an expensive improvement, such as lathing and strapping the under flat, which had never been lathed and strapped, could not be held to come under the head of repairs, unless health were impaired.

The Sheriff (BELL) sustained this interlocutor.

The petitioner appealed.

SCOTT and ROBERTSON for him.

M'LAREN and ORPHOOT for respondents.

To-day the Court unanimously recalled the interlocutor, and remitted to the Sheriff to see that the strapping and lathing of the two rooms on the ground floor should be proceeded with. They also found expenses due in both courts to appellant.

LORD COWAN said—I think the Sheriff is in error. I think every tenant is entitled to have his house kept habitable during his tenancy, in the absence of any stipulation to the contrary. The fact that nearly two years elapsed before the complaint was made does not preclude him from his remedy.

LORD NEAVES—The point is, that when the object of a contract of lease is of such a kind as a house for human beings, it must be habitable. Call these alterations improvements or repairs, they are necessary to make the object of the contract what it ought to be—habitable.

Agent for Appellant—W. Livingstone, S.S.C.
Agents for Respondent—Jardine, Stodart, & Frasers, W.S.

Thursday, May 30.

FIRST DIVISION.

M'NEILL'S TRUSTEES *v.* CAMPBELL.

Teind—Interim Locality—Suspension.—A.S. 1809, § 5.

Note of suspension of a threatened charge by the minister on an interim decree of locality *refused.*

This was a suspension of a threatened charge upon an interim decree of locality. The suspenders were the trustees of the late John M'Neill of Ardnacross, and the respondent the Rev. Colin Campbell, minister of the united parishes of Kilninver and Kilmelford. The ground of suspension was that the stipend which the suspenders had been called upon to pay greatly exceeded the true amount of their teind, as determined by a valuation of the Sub-Commissioners in 1629. The suspenders averred that decree of approbation of the said subvaluation had been obtained by other heritors in so far as it referred to their lands. In 1866 the suspenders raised an action of approbation of the said sub-valuation, and obtained decree in absence. An error in the summons was afterwards discovered,