

twenty-five pints and a choppin ; at which rate their five chalders of victual will, by this extravagant measure, be near six. *3tio*, The Duke obliges them to carry it to the Clyde-side, where they have no convenience in delivering it, whereas it were more equal for both that his chamberlain came and measured it upon their barn-floors.

ANSWERED to the *first*,—That this castle-ward duty being a part of the King's patrimony, it can pay no cess ; as was lately found at Exchequer, betwixt my *Lord Kelly* and the *Chamberlain of Fife* : and as to the decret, it is noway *res judicata quoad* that point, but only an interlocutor yet subject to the Lords' review. To the *second*,—When this watch-mail was constituted there was no such measure known as that of Linlithgow, which was not introduced till the 96th Act 1503, and therefore it must be the measure of the shire where the lands lie, the Linlithgow measure being only the rule and standard in buying and selling. To the *third*,—By the feudal law, vassals are bound to bring their feu-duty to their superior's mansion-house ; and yet, for their ease, the Duke is content to receive it from them at the ferry-dyke.

The Lords, as to the cess, being unclear, resolved to hear it in their own presence ; but, for the measure, found that of Dumbarton behoved to be the rule ; and, for the feuars' ease, allowed either party to condescend on and design a particular place, where all the feuars might bring their proportions and quotas, and the Duke to have one yearly there, to see it measured. *Me referente*.

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1710. *January 14.* CAPTAIN WILLIAM GARRIOCH *against* ROBERT AUCHTERLONY.

CAPTAIN William Garrioch, as factor for Cornelius Vanderpot and Company, merchants in Rotterdam, freights Robert Auchterlony, skipper in Leith, his ship, to transport forty or fifty tons of lead ore, bought from the Earl of Hope-toun, to the foresaid merchants at Rotterdam ; and he desired twenty tons of it to be put on board, as convenient ballast to his ship in the harbour, aye till a convoy should offer, and then he would take in the rest. In the meantime offer of a greater freight is made to him, to bring home a parcel of wines ; whereupon he pretends that the weight of the lead ore had damnified the ship, so that he durst take in no more, and therefore requires Garrioch to take out the ore, and pass from the bargain ; and on his refusal disloads it himself : And being pursued before the High-admiral for damages, having lost the season and opportunity of transporting the said lead for that year ; and he alleging, *1mo*, That it had so bruised his ship that it was not able to sail till fitted and repaired ; *2do*, That no convoy was offered him ; and this being admitted to his probation, he succumbed ; and it appeared that, being in summer, the ship might have performed the voyage ; and, for a convoy, the freighters had not undertaken any such condition, but insured the ship :—therefore the Admiral decerned him in £290 Scots of damages. Of this decret the skipper presented a bill of suspension, alleging it was without probation ; and he was the greatest loser, his ship, by its incapacity, being unfit for any voyage ; and he waited for a convoy, which was never offered ; and the sum modified was exorbitant.

The Lords repelled the reasons, refused the bill, and sustained the Admiral's decret of modification ; for it was not proven that the ship was damnified by the weight of the lead ore, seeing it might arise from stress of weather, the striking on the anchor of other ships, or from inward latent defects.

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1710. *January 17.* MARJORY MONCRIEF, Lady Denmiln, Petitioner.

MARJORY Moncrief, Lady Denmiln, gave in a bill to the Lords, bearing, that Michael Balfour, her husband, went from his own house in March last, 1709, to visit some friends and for other business ; and, in his return home, he sent his servant an errand into the town of Coupar, and told him he would be at home before him ; and yet he has never yet returned to his house, notwithstanding all the search and inquiry made for him and the horse he rode on, and no account can hitherto be got what is become of him ; by which misfortune his creditors are falling upon his estate, and proceeding to diligence, which may encumber and embarrass his fortune, though it far exceed his debts, unless prevented : therefore craves, in this extraordinary case, the Lords may name a factor to uplift the rents, and out of it pay the current annualrents, and give an alimnt to her and her seven children.

There were many conjectures about him ; for some have been known to retire and go abroad upon melancholy and discontent ; others have been said to have been transported and carried away by spirits ; a third sort have given out they were lost, to cause their creditors compound ; as the old Lord Belhaven was said to be drowned in Solway sands, and so of Kirkton, yet both of them afterwards appeared. The most probable opinion was, that Denmiln and his horse had fallen, under night, into some deep coal pit, though those were also searched which lay in his way home.

The Lords thought that the case craved some pity and compassion, and that their interposing would come better if the creditors had applied ; yet they appointed a factor, to last only for the year 1710, to uplift and manage the rents for the creditors and relict, before which were expired they would be at more certainty whether he be dead or alive.

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1710. *January 19.* SIR PATRICK HOME of RENTON *against* The TENANTS of HEADCHESTER.

SIR Patrick Home of Renton, Advocate, having a roum called Forresterlands, lying within the barony of Old Cambus, belonging to Sir James Hall ; and his tenants claiming right to a cart-road through Sir James's ground, to bring home their peats, feal, and divot, out of the muir of Coldingham ; and the tenants of Headchester stopping their passage that way, and putting them to go another way far about, Mr John Home, the said Sir Patrick's eldest son, came, in November 1708, with some servants waiting on him, to force their carts' pas-