his hazard of all future emergents. And if he had intended to assign the pension only during the existence of Sir Archibald's right, would he not have said it? But he is so far from that, he explains his meaning by these additional words,—" As long as Sir Archibald lives, and Sir Robert enjoys the office, Sir Archibald Sinclair shall have right to the yearly fee and pension assigned." Which imports, that, by whatsoever title Sir Robert should have the office, Sir Archibald, during all that time, should have the salary; and he was no loser; for Sir Robert gave no price for it, but only renounced the salary, which was none of his, and took himself to the perquisites, which were considerable. And, *esto* there was a dubiety, *verba sunt interpretanda contra proferentem.* And the like was found betwixt the *Earl of Winton* and *the Lord Pitmedden;* who, having a bond of pension when he was an advocate, Winton alleged it ceased when he changed his station, and was advanced to be a Lord of Session: but the Lords found it still due. And, as to the fund of the tunnage, he is not assigned to any such fund; but allenarly to L.100 sterling of salary indefinitely, and in the general.

The Lords, on the first report, found the meaning of parties was, That Sir Archibald should only have right to the salary so long as Sir Robert bruiked the office by his right and demission. But, on a reclaiming bill, they altered, and found the salary due for all the years the said Sir Robert possessed, by whatsoever title. But, towards their farther clearing, they ordained inquiry to be made, if, upon Sir Robert's second reëntry into the office, precepts or payment of the salary was made by the Barons of the Exchequer to Sir Robert or Sir Archibald; or if Sir Robert opposed the paying of the salary to Sir Archibald; or if there was any acquiescence or homologation on his part: Which would tend exceedingly to explain what was the parties' meaning in that agreement; for it seemed to be a case of divination; and a conflict betwixt the letter of the words upon the one part, and the sense and meaning on the other.

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1711. *July* 7. SIR ROBERT DICKSON *against* SIR JOHN HOUSTON and his BROTHER.

AN appeal was given in by Sir Robert Dickson of Inveresk against an interloctutor, decerning him in £2900 sterling, as Sir John Houston and his brother's proportion and share of the profits of the tack of the customs, wherein they were partners, from 1691 to 1696.

Sir Robert craved allowance for his pains and trouble in managing; as also, that Sir John should pay annualrent for the money he retained in his hand, as Collector at Port-Glasgow, conform to the Acts of Sederunt made in their society; both which the Lords had refused. *Vol. II. Page* 657.

1711. *July* 18. FOTHRINGHAM of POURY *against* HUNTER of BURNSIDE.

FOTHRINGHAM of Poury feus off a part of his lands near the castle of Brughty,

with the fishings, to Hunter of Burnside; and the reddendo of the charter is, L.190 Scots, and a barrel of salmon, full red and sweet, yearly. Before the Union, the superior accepted of L.30 Scots as the price of the said barrel; but the measures being now altered and augmented to the Berwick bind, which is larger than our former barrel, Poury pursues Burnside, his vassal, to deliver him yearly a barrel conform to the present gauge and standard; and that it be sufficiently packed and cured with Spanish, French, or Bay salt, for export, or else L.42 Scots, as the present value thereof.

ALLEGED for the Vassal,—We agreed upon a liquid price; and so that part of my feu-duty comes to be *pretium æstimatum*, viz. L.30 Scots; and therefore you can crave no more. ANSWERED,—Whatever liberation that may operate for bygones, it can never oblige him in time coming; but he may crave *ipsa corpora*. And such is the mutual confidence betwixt superiors and vassals, by the feudal law, that vassals must not detort their superiors' lenity to their prejudice.

The Lords found the L.30 was a sufficient exoneration for those years wherein it was paid and accepted, but no farther.

2do, ALLEGED,—That his rule of payment must be the measure of the barrel the time of giving out the feu; so that, if any supervenient law or custom augment that measure, it cannot prejudge the vassal to augment his feu-duty; no more than if a law had made the salmon barrels less, would that have obliged the superior to accept that lesser measure.

ANSWERED,—By our Acts of Parliament, the measures of salmon barrels have frequently altered. By Act 76th 1477, salmon were to be packed in barrels of the measures of Hamburgh; then, by the Act 110th 1487, they are appointed to hold 14 gallons. By the 57th Act 1573, they are to contain 12 gallons of the Stirling pint; and then, by the 5th Act 1693, they are brought down to 10 gallons; which the coopers are enjoined strictly to observe. So that, as the law alters, so must his barrel of salmon; which cannot be paid by a measure prohibited by law.

The Lords found, the augmenting of the barrel, by the changing our measures into the English, at the Union, cannot augment the vassal's feu-duty; but it must be paid conform to the standard that obtained at the time of the charter.

3tio, The Vassal ALLEGED,—This barrel of salmon was for the superior's consumpt in his family; and, being for that use, Scots salt was sufficient; and his charter not mentioning that it was for export, he was not bound to rouse them with salt upon salt.

ANSWERED,—He is not concerned what I do with it. I may either export it or consume it in my family; though few will keep a whole barrel for that use. Neither will our Scots salt preserve them a year; but he declares he is to send it abroad; and so, by law, must be cured with foreign salt, under a penalty. Yea, by an Act of Privy Council in 1688, the curing them with Scots salt is discharged; as tending to the disgrace of the nation, when presented in foreign markets; and the foresaid act of King William renews the same prohibition.

The Lords found the superior was not obliged to accept of it as cured with Scots salt; but that, in terms of the said 5th act, it must be packed with foreign salt as for export.

4to, The Vassal ALLEGED,—If so, then I must have allowance of the draw-back

given for encouraging export. ANSWERED,—I must have the benefit of the drawback; for, if there were a duty or imposition laid on them, (as once there was at exporting,) I, as proprietor, behoved to pay it; even so here, *a pari, qui sentit incommodum debet et habere commodum.*

The Lords found the drawback belonged to the vassal. Some proposed that it might be left to the superior's option, yearly, either to accept a barrel cured with Scots salt, without paying the drawback, or with foreign salt, deducing the drawback. But it was thought this alternative would be the seed of a yearly plea and contest; and therefore it was laid aside. The vassal's disadvantage was, that he had feued that land, mainly in contemplation of the fishing salmon at the mouth of the Tay and near Dundee; and it had much failed and decayed several years bygone. *Vol. II. Page* 661.

1711. *July* 19. HELEONORA NICOLSON, Lady Greenock, *against* SIR JOHN SHAW of GREENOCK, her Son.

AN appeal was given in by Lady Greenock against Sir John Shaw, her son, against the Lords' interlocutor finding the contract passed betwixt her husband and her null and dissolved *ob causam datam causa non secuta;* because, though it bear she had fulfilled her part by giving a disposition of the lands of Carnock to her son, yet it was now come *in non causam,* being lying beside her cancelled, and that law presumed she had destroyed it, being in her custody, and bearing a clause dispensing with the not delivery; and never being ratified by her, unless she instructed another way. And repelled her offer of making it up, and giving a new disposition to take off her son's damage. *Vol. II. Page* 663.

[See Reports of this Case, by Forbes and Fountainhall, Dictionary, pages 8563 and 9166.]

1711. *July* 19. TOWN of ABERDEEN *against* DR MIDDLETON and OTHERS, Masters of the College of Aberdeen.

THE Town of Aberdeen having purchased a part of the lands of Panton of Hilton at a roup, which holds of the College, they charge Doctor Middleton and other masters, to receive them, and offer a year's rent. They SUSPEND on this reason,—That they being a community, which never dies, if they entered them they should lose the casualties of superiority; such as non-entry, liferent escheat, duplication of the feu-duties which arise by the death, delinquency, or neglect of other private vassals; which is such a prejudice to superiors, that Stair, *tit. Infeftments of Property, sec.* 41, from Craig, thinks a superior is not bound to receive a community for his vassal; and proposes a remedy,—that the corporation should name a trustee, by whose death or delinquency the casualties of the superiority should open; (and which Basnage, in his learned *Commentaries on the Customs of Normandy,* calls *un homme vivant et mourant;* and Craig, *lib.*