

No. 228. the common measure of the place, and not with the Linlithgow measure. The Lords found, That the victual is payable to the charger with the common measure, and therefore found the letters orderly proceeded, without prejudice to the heritor to apply to the Commission for rectification of the locality as accords.

*Sir P. Home MS.*

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1696. *February 25.* TREASURER of EDINBURGH *against* FEUERS.

No. 229.

Vassals being in use, past memory of man, instead of their feu-duty in victual, to pay the fiars, viz. 20s. Scots or so *per* boll, this was not found to bar the superior from claiming the *ipsa corpora* in time coming.

*Fol. Dic. v. 2. p. 427. Fountainhall.*

\* \* \* This case is No. 6. p. 4188. *voce* FEU-DUTIES.

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1697. *July 7.* MALCOLM *against* IRVINE.

No. 230.

A Minister insisting for a certain sum in money, and offering to prove *decennialiter et triennalem possessionem*, though the decret of valuation carried only a certain number of bolls that were not *communibus annis* worth that sum, the Lords found it enough for the Minister to prove seven years use of payment in money to make the heritor liable in by-gones, till the valuation in a declarator were made the rule in time coming.

*Fol. Dic. v. 2. p. 428. Fountainhall.*

\* \* \* This case is No. 15. p. 14791. *voce* STIPEND.

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1712. *December 4.*

No. 231.

Use of payment for 40 years, of a certain proportion of the dues of an office, by the Clerks to their principal, less than due, exempted them from a demand for by-gones.

ALEXANDER HORSEBURGH, of that Ilk, Commissary of Peebles, *against* THOMAS CRANSTOUNS, elder and younger, Commissary Clerks thereof.

Alexander Horseburgh pursued his Clerks for count reckoning and payment to him of all the profits emoluments and casualities of the Commissariot of Peebles, belonging to him as Commissary, since the date of his commission, August 12, 1707, according to the Tweny-fifth Article of the King's Instructions to the Commissaries, recorded in the books of Session, February 20, 1666, appointing all the profits to be divided into three parts, whereof two should belong to the Commissary, and a third to the Clerk, with the burden of paper, ink, wax, and writing-chamber; and that it might be declared accordingly.