

1682. *January 7.* EDWARD GILLESPIE *against* HUGH INGLIS.

EDWARD Gillespie's charge against Hugh Inglis, merchant, being this day advised, the Lords found, by the probation, that the skipper, Edward's cedent, had 600 deals on board; whereas to the skipper's portage, in the custom of merchants, there is no more allowed but what the cabin, the bed-rooms, and the deck, will hold or stow: and therefore allowed compensation for those deals except what the skipper should yet prove a ship of that burden might hold and contain of deals in these places above mentioned. But these deals being the skipper's own, the merchant who freighted the whole ship can only claim his damage and interest, or *lucrum cessans*, through his not having the whole loading, which is the freight and profit might be made of these deals.

The words of the interlocutor, at it was minuted by the clerk, run thus:— The Lords find, by the probation adduced, that the skipper, when he is obliged by his charter-party to bring home a full loading of timber, by the mercatorian custom his only privilege of portage is in the cabin, and where his men's beds are, and above deck; and allow the charger to prove how many deals a ship of 120 tons (which is the burden of this ship,) may contain in the foresaid parts thereof; and, in the mean time, continue the advising of the cause.

*Vol. I. Page 168.*

---

1682. *January 7.* ALEXANDER AUCHMOUTIE *against* LORD DUMFERMLINE'S TENANTS OF FYVIE.

IN Mr Alexander Auchmoutie's charge against my Lord Dumfermline's tenants of Fyvie; the presenters of the bill of suspension having refused to insist, and it having been referred to Harcous to discuss it on the bill, the Lords, on a new petition given in by Mr Auchmoutie, discharged the clerk of the bills to present any new bill in behalf of the Earl or his tenants, against Mr Auchmoutie, except only before my Lord Harcous; that so they might not steal through a suspension before another Lord, contrary to the late Act of Sederunt.

*Vol. I. Page 168.*

---

1682. *January 20.* BROWN of DOLPHINSTON *against* MARJORY COCKBURN.

IN the debate between Brown of Dolphinston and Marjory Cockburn, about a pasturage, the Lords found the servitude of pasturage proven: but, in regard it appeared, that, for thirty years together, the parties had always transacted it, and taken ten merks by year in lieu thereof; therefore the Lords modified and liquidated it to that price yearly, in all time coming. So that these customs of a voluntary conversion are not safe, because they may be afterwards obtruded as an acquiescence.

*Vol. I. Page 170.*