

No 302.

THE LORDS found the measure of the shire or lands contracted to be the rule, and not Linlithgow measure.

Fol. Dic. v. 2. p. 162. Stair, v. 2. p. 612.

* * * Fountainhall's report of this case is No 83. p. 449. *voce ALIMENT.*

No 303.

Where there is no uniform measure in the place where a contract is made, the general standard measure for the kingdom is understood to be meant.

1696. *January 23.* HUGH MONTGOMERY *against* JOHN THOMSON.

RANKEILOR reported Hugh Montgomery against John Thomson of Seven-acres, and others thirled to his mill. By a contract they are bound to pay some bolls for dry multure. The question arose, What should be the measure? The heritor of the mill *contended*, It behoved to be the measure by which they commonly bought and sold in markets within the regality of Kilwinning, and bairliary of Cunningham, within which the mill lies. *Answered*, Where a measure is not expressed, it must be understood of the universal general measure for the whole kingdom, which, by the 115th act 1587, is the Linlithgow measure; whereas, in Nithsdale, Galloway, and many other places, the measure will be two or three pecks more on the boll than the common Linlithgow measure. *Replied*, The meaning of parties is to be adverted to in all contracts; and when one agrees for bolls indefinitely, it must be presumed to be conform to the measure of the place where the land lies, and the parties dwell and contract; and Sir George M'Kenzie, on that act of Parliament, shews the local particular measures have derogated in many places from the general standard, as particularly in womens jointures and ministers stipends; and that they are to be paid and received by the accustomed measure of the place, and not by the Linlithgow measure.—THE LORDS considered, that if there were a general uniform received measure in this jurisdiction and regality of Kilwinning, then there might be reason to presume that was the measure the parties meant in this contract; but it being alleged that they varied, there was no reason to make the measure of a single parish or barony a fixed rule and standard; therefore, before answer, they ordained the custom to be tried, if it extended to the whole district and regality, or if it is various and dissonant from one another; in which last case, they would expound the contract to be the Linlithgow measure, and no other. This variation of measures is very prejudicial to the lieges.

Fol. Dic. v. 2. p. 162. Fountainhall, v. 1. p. 703.