

1688. *June 26.*

MR. CHARLES LITTLEJOHN, Minister at Largs, *against* SIR JAMES MONTGOMERY
of Skelmurly.

In this case, the Lords found, That though the acts of Parliament did make the Linlithgow measure the rule of commerce, yet seeing in these parishes they had a larger measure, therefore the Minister was to receive his stipend by the local measure of that part, reserving to Skelmurly to redress himself before the Commission. In this cause, the Chancellor said, that the Ministers were the part of the kingdom that deserved worst at his Majesty's hands. Skelmurly gave in a bill of suspension against this, pretending, that this great measure could not be the rule, because it was only introduced lately within the parish betwixt master and tenant, and Linlithgow was the ancient measure.

Fol. Dic. v. 2. p. 428. Fountainhall, v. 1. p. 507.

* * Sir P. Home reports this case :

Mr. Charles Littlejohn, Minister at Largs, having charged Sir James Montgomery of Skelmurly and his tenants for payment of 28 bolls of bear and meal, as a part of their stipend payable out of his lands within that parish, conform to the decreet of locality; and they having suspended, upon this reason, that they were content to pay the victual with the Linlithgow measure, and seeing there was no particular measure condescended upon in the locality, the standard measure should be the rule, especially seeing the act of Parliament appointing the Ministers' stipend to be 8 chalders of victual, or 800 merks, has liquidated the victual with respect to Linlithgow measure, whereas, if there had been any other measure understood, it would have been liquidated with respect to the greater or lesser measure; answered, When the teinds of these lands were valued, and stipend modified, the valued bolls being payable with the common measure of that country, which is much larger than the Linlithgow measure, the Minister's stipend ought to be paid with the same measure with which the valued bolls are payable; and albeit the Linlithgow measure be appointed by the act of Parliament to be the standard measure of the whole nation as to buying and selling, yet that is without prejudice to masters and Ministers, or others, whose farms or stipends are payable with another measure; and seeing the decreet of locality does not condescend upon the measure with which the stipend should be paid, it must be understood to be with the same measure with which the valued bolls are payable, and which is the common measure of that country, the Linlithgow measure not being brought in use at that place as yet; and it was so decided in the case of the Minister of Dalrymple against the Earl of Cassillis, 27th June, 1667, No. 224. p. 15332. where, the Minister having a locality of 3 chalders payable out of the same lands belonging to the Earl of Cassillis, the Lords found, that the victual ought to be paid with

No. 228.
In conformity
with No. 224.
p. 15332.

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.

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.

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

No. 230.

A Minister insisting for a certain sum in money, and offering to prove *decennaliter 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.

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 casualties 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.