

1782. *July 21.*

NO 104.
Jurisdiction
of the Court
of Session,
interposed to
regulate the
firlot-measure
given out by
the town of
Linlithgow.

JAMES FINLAY, and Others, with concurrence of his Majesty's Advocate, *against*
The MAGISTRATES and TOWN COUNCIL of Linlithgow, and the Corporation of
Bakers of Edinburgh.

THE superintendence of the weights and measures of Scotland had been anciently committed to different burghs of the kingdom. Thus Edinburgh had charge of the measure of length, Lanark of the weights, Stirling of the liquid measure, and Linlithgow of the dry measure.

The Parliament, however, in 1617, saw the necessity of a general adjustment of weights and measures, from the diversity and uncertainty of which heavy complaints had then arisen; and having appointed a committee to form a plan for that purpose, these commissioners made their report in 1618, which was ratified and approved by Parliament in 1621.

This report ascertained the standard quantity of all the weights and measures of Scotland. In particular, with respect to the Linlithgow firlot or dry measure, which for 50 or 60 years preceding, had been generally used throughout the kingdom, and was prescribed by Parliament as a standard, it declared, that the firlot used for measuring wheat, rye, beans, pease, meal, and white salt, in the way of *streak* measure, contained 21 pints and one mutchkin ' of just Stirling jug and measure; ' this jug containing three pounds and seven ounces of French Troy weight, of clear running water of the water of Leith. But as it had been customary to measure malt, bear, and oats, by the same firlot *heaped*, the committee ordered a new firlot to be made, answerable to that encrease of quantity, without departing from the mode of *streaking*, and to hold 31 pints of Stirling measure.

The committee likewise specified the dimensions of these firlots; which however did not correspond to the above mentioned contents. Nor, so far as is known, were any standard-firlots ever constructed in consequence of these directions. On the contrary, the method used by the Magistrates of Linlithgow, in adjusting the firlots, which, thus authorised, they give out to different parts of Scotland, is merely by emptying into the vessels the Stirling jug the requisite number of times.

But of late, it has been thought, that these firlot-measures exceed the just stand; which has afforded matter of complaint to persons who, by selling according to them, must suffer a loss proportioned to the excess.

Mr Finlay, in particular, and other farmers, from whom the bakers of Edinburgh purchased victual by the Linlithgow firlot, instituted before the Court, with the concurrence of his Majesty's Advocate, an action of declarator against the Magistrates of Linlithgow, and against that corporation, in order that the bakers might be ordained to destroy the false firlots which they were then using, or to rectify them according to the legal standard; and that the Ma-

‘ gistrates, and their successors in office, should be prohibited and discharged
 ‘ from giving out or making any firlots disconform to the legal standard in all
 ‘ time coming, under the penalty of L. 10 Sterling *toties quoties*, besides being
 ‘ liable in damages as to the time past.’

In order that the alleged disconformity between the legal standard and the firlot-measures actually issued by the Magistrates of Linlithgow might be examined, the Lord Ordinary appointed Mr John Robison, professor of natural philosophy in the University of Edinburgh, to ascertain that matter by proper experiments.

The result of his examination was a report, ‘ That the bear-firlot contained
 ‘ ten gills and three quarters of water more than the standard or about $2\frac{1}{2}$ *per*
 ‘ *cent.*; and that the wheat-firlot held of water two mutchkins more than the
 ‘ standard, which amounts to $2\frac{1}{2}$ *per cent.* ;’ errors which had arisen partly from
 the method itself of repeatedly filling and emptying the Stirling jug, and part-
 ly from the town cooper’s particular mode of filling.

The matter was then laid before the Court upon informations; in which, on the one part, it was *objected*. That private parties had no title to pursue for the establishment, under penalties, of general regulations, nor his Majesty’s Advocate to act as a public prosecutor but in criminal causes; and, on the other part, it was *answered*, That if the present action were not competent, though the abuse complained of might in the future be increased to almost any degree, yet the public, however much aggrieved, could never hope for redress.

THE LORDS pronounced an interlocutor, “ assoilzieing the Magistrates from the claim of damages, and remitting to the said John Robison, and Mr Dougal Stewart, professor of mathematics, along with the cooper to the Dean of Guild of Edinburgh, and the cooper employed by the Magistrates of Linlithgow in making and giving out the standard-firlots, to report their opinion of the most proper mode of regulating the firlot-measure by the standard-jug, in terms of the acts of Parliament; and that in such manner as may be carried into execution by any experienced craftsman with a reasonable degree of exactness.”

George Clerk-Maxwell, Esq; one of the Commissioners of the Customs, having afterwards been included in the remit, he, together with Professor Robison, reported two different methods of constructing with accuracy a firlot-measure, agreeable to the legal standard; one of which, being that adopted by the Court in the following interlocutor, was by making use of a vessel calculated to contain a quantity precisely equal to the prescribed number of fillings of the standard-jug.

THE LORDS “ repelled the objection to the incompetency, and found the method presently used by the cooper of Linlithgow in adjusting the firlot-measure, was erroneous: Found, that the first method proposed in the report of Messrs Clerk and Robison, was proper and right; therefore approved the same; and remitted to the Lord Ordinary to direct a standard to be made conform thereto, at the sight

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of Messrs Clerk and Robison, to be held in all time coming as the standard firloft-measure; and to do therein as he should see cause."

Accordingly the Lord Ordinary pronounced judgment as follows: "THE LORD ORDINARY having considered the interlocutor of the Lords in presence, with what is above set forth, remits to, and authorises the said George Clerk-Maxwell, Esq; and Professor John Robison, to chuse and employ an intelligent tradesman, to make a standard, at their sight and direction, agreeable to, and in terms of the first plan or method described in their report given in to and approved by the Court: Finds, that the said standard is to be made use of and followed by the Magistrates of Linlithgow, as the only standard in adjusting the firlots to be given out by them, and used by the lieges in all time coming; and which firlots so to be adjusted and used, as above, besides the former usual marks or impressions put thereon at adjusting, the same shall likewise have the mark or impression of the letter R put thereon, denoting, that the firlots are adjusted according to the new and rectified standard aforesaid; and finds and declares, That it shall not be lawful for the Magistrates of Linlithgow, or any other, to give out new firlots in time coming adjusted in another manner."

Lord Reporter, *Alva.* Act. Lord Advocate, *R. Dundas.* Alt. Mat. *Ross.*
Clerk, *Orme.*

S. *Fol. Dic. v. 3. p. 343. Fac. Col. No 52. p. 81.*

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Jurisdiction of the Court of Session competent, in the first instance, to a question between a mariner and his apprentice.

1783. February 5. JAMES KINNEAR against JAMES PETER.

KINNEAR having, by indenture, become the apprentice of Peter a shipmaster, in his sea-faring occupation, brought against him, before the Court of Session, an action of damages, on account of an alleged failure in the performance of the contract.

Peter *objected*, that the cause being of a maritime nature, could not be tried there in the first instance.

The LORD ORDINARY "repelled the objection to the competency of the jurisdiction."

In a reclaiming petition preferred to the Court, it was *argued* for Peter, That the contract between the parties related to nothing but maritime or sea-faring matters; it being the duty of a seaman's apprentice, which, on one hand, was undertaken, and, on the other, the charge of training up and instructing such a person in the art and business of a mariner; and therefore, that in the first instance, the jurisdiction of the Court of Session was not competent. But,

THE LORDS refused the petition without answers.

Lord Ordinary, *Alva.* For the Petitioner, *Nairne,*

S. *Fol. Dic. v. 3. p. 345. Fac. Col. No 90. p. 139.*