

No 68. trade, and consequently by themselves, or others employed under them, whether freemen or not, to make all such barrels and kits, as were necessary for packing the salmon to be by them exported: That, by so doing, they did not violate or encroach upon the seclusive privilege of this incorporation, which extend no further than to give a monopoly of making such pieces of work as are to be exposed to sale within the burgh; and can never be extended so as to debar them either from importing barrels and kits ready made, or from getting them made within the burgh for the use of exportation.

In support of this defence, a fact was alleged that occasioned a very long proof, namely, That the coopers of Perth were not sufficiently skilled in making barrels and kits.

The cause, with the proof, being reported to the Court, I gave my opinion, that though an unfreeman is not entitled to the benefit of the town-market, yet no law prohibits him to manufacture goods for exportation. And, in the present case, that I could not see a reason why the Company might not employ their own servants to make barrels, as well as to cure and pack their salmon. The President's opinion was, that wherever a society can import the materials or utensils of their manufactory, it can never be unlawful to employ their own servants to save importation.

'THE LORDS assoilzied; it being the opinion of the Court, that the society may employ their own servants.' And this opinion was given upon the abstract point, without regarding the proof.

Sel. Dec. No 25. p. 17.

1752. December 26.

The TAXMEN of the TOWN of Edinburgh's Impost upon Wines, against Sir ROBERT MYRETON of Gogar.

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Impost granted to the town of Edinburgh, is payable on wine, &c. imported within the limits of the grant, though for private consumption.

IN April 1671, the town of Edinburgh obtained a grant from King Charles II. of an impost or duty upon certain wines and other foreign liquors; the grant proceeds on a narrative of the necessity of granting such impost, in these words: 'Adeo ut nisi prorogatio impositionis super vino, aliisque exteris commoditatibus importandis concedatur omni tempore futuro (magistratus) non solum incapaces reddentur sustinere communes sumptus negotiorum dictæ civitatis, sed necessario cogentur subjacere oneri eorum antiqui æris alieni,' &c. And the grant is in the following words: 'Dedimus, &c. Impositionem et custumam summæ duorum solidorum monetæ Scotiæ super unoquoque Scotico pincto vini Gallici; quatuor solidorum monetæ prædictæ super unoquoque Scotico pincto vini Hispaniæ et Rhenensis, *lie brandy wines* extranea aqua vitæ, aquis re-coctis, aliisque extraneis liquoribus distillatis; summæ duodecim denariorum monetæ Scotiæ super unoquoque Scotico pincto de, *lie mum*, et super unoquoque Scotico pincto extraneæ cerevisiæ et zythi; importand. et vendend. intra

‘ dict. civitatem de Edinburgh, vel quasvis libertates ejusdem postea specificat ;
 ‘ solvend. per venditores et cunctos alios invectores dicti vini specierum prædict.
 ‘ extranei zythi et cerevisiæ, ad dictam civitatem et territoria eo spectan. viz.
 ‘ ad *South and North Leiths, Canongate,* &c. And the grant ordains letters of
 horning to pass at the instance of the magistrates of Edinburgh, for payment
 of the said duty, ‘ super pincto dict. vini, &c. importand. omni tempore fu-
 ‘ turo, per venditores et invectores dict. commoditatum intra dictam civitatem,
 ‘ partes, &c. supra express.’ And, in 1672, this grant was ratified in Parlia-
 ment.

From the date of this grant, down to August 1751, the magistrates were in use to give *gratis* warrants to the inhabitants, for importing from Leith, or elsewhere, free of the said duty, such wines as the inhabitants intended to consume in their own private houses ; so that, during that period, the duty was only exacted on wines and others sold in taverns, or retailed in shops ; but all wines, &c. attempted to be brought into the city, not accompanied with such *gratis* warrants, or with an impost warrant from the collectors of the duty, were seized and confiscated.

There being a remarkable decrease of this duty, occasioned by the consuming of much less wine in taverns, and much more in private houses than formerly, the magistrates, by an act of council, in August 1751, discharged the granting of any such *gratis* warrants for the future, till the prohibition should be taken off by another act of Council, except to such as are exempted from impost by law (viz. the members of the College of Justice.)

Many of the inhabitants, imagining that it was not in the power of the magistrates to exact impost upon wines imported into the city and liberties for private consumpt, resolved to have the question tried ; and, in order thereto, Sir Robert Myreton having bought a parcel of wine at Dalkeith, applied to the magistrates of Edinburgh for a *gratis* warrant for importing it into Edinburgh ; which being refused to him, he brought his wine to the port, where it was seized, and he charged for the duty.

Upon this Sir Robert presented a bill of suspension to the Court of Session, and *alleged*, That, by the words of the grant, the duty was only imposed upon wines and others, *importan. et venden. intra dictam civitatem de Edinburgh, vel quasvis libertates ejusdem.* And though the duty be payable *per venditores et cunctos alios invectores dicti vini*, yet *the said wines* are only such as had been mentioned in the granting clause, *i. e.* wines imported and sold within the city and liberties ; so that, in order to entitle the town to the duty, it was necessary that the wine should be both imported and sold ; that this was agreeable to the genius of the law of Scotland in like cases ; for, by act 255. Parliament 1597, customs were payable to the Crown only for goods imported for sale, but gentlemen importing foreign commodities for their own use were liable to no custom. And when duties upon merchandise imported into Scotland were granted to King Charles II. during his life, to be levied by way of excise, the duty was

No 69. not made payable by the importer, in respect of the importation, but by the retailer, or first buyer after importation, as appears from 14th act, Parliament 1661.

2dly, He alleged that it had been the uniform construction of the grant, from its date to August 1751, that the duty was only to be levied upon wines imported into the city for sale; for, as often as any wines were imported for private consumpt, *gratis* warrants had been granted, not as a matter of favour, but as of right; and the magistrates could not now alter the custom, and put a different construction on the grant, which was in effect to make a new one.

Answered for the chargers: That the suspender's construction of this grant, viz. that both importation and sale must concur, in order to give the town a title to the impost, would imply the greatest absurdity; for he must admit, that, by the strictest interpretation of the words, wines bought at Leith and imported into Edinburgh, whether for sale or private consumpt, are liable to the duty; and if wines bought at Dalkeith, Musselburgh, or any where else, without the liberties of the town, and afterwards brought into the town, are not also liable, the grant would only have the effect to ruin the town's own port, viz. the port of Leith, but would bring in no revenue to the town, as every one would purchase his wines at places without the limits of the grant; but from the whole tenor of the grant, it is evident that the duty is imposed upon all wines consumed within the city of Edinburgh or liberties, wherever the wine was bought: This appears from the narrative of the grant, which sets forth the necessity of imposing a duty *super vino aliisque exteris commoditatibus IMPORTANDIS*; and from the executive clause, ordaining letters of horning to pass for payment of the duty *super pincto dicti vini IMPORTAND. omni tempore futuro, per venditores et INVECTORES dict. commoditatum.*

And the genius of our law, in these matters, is by no means such as the suspender represents it; for, by act 210. Parliament 1594, a duty was payable to the Crown on all wines imported into the kingdom, and that within ten days after importation, though not retailed or sold; and, by the act 14. Parl. 1661. cited for the suspender, the duty thereby imposed is payable by the importer, and salt-maker, for what they consume themselves.

Further, That at the date of the grant, it was understood to impose a duty on all wines consumed within the town, appears from the decret of declarator, obtained by the Members of the College of Justice against the town of Edinburgh in 1687; whereby, among other things, the members are declared free from payment of this duty.

And with respect to the usage of granting *gratis* warrants, *answered*, The applying to the magistrates for these, was an acknowledgment that the wines were liable to the duty; and that, in order to free them therefrom, it was necessary to apply to the magistrates for an indulgence; and the granting of these for any term of years could no more free the inhabitants from the duty, or oblige the magistrates to continue the indulgence, than if an heritor had yearly

granted to another, on his applying for it, a liberty of casting peats in his moss, which could never constitute a servitude, or oblige the one to continue the favour to the other any longer than he pleased.

' THE LORDS repelled the reasons of suspension, and found the letters orderly proceeded.'

Reporter, *Lord Minto.*

For the Chargers, *Advocatus.*
Clerk, *Gibson.*

For the Suspender, *Ro. Craigie.*

Bruce.

Fol. Dic. v. 3. p. 104. Fac. Col. No 53. p. 78.

1755. July 16.

The BURGH of KIRK WALL against The INHABITANTS of STROMNESS.

The royal burgh of Kirkwall being jealous of the village of Stromness, where there is a good harbour, and suspecting that its privileges of foreign trade were encroached upon by the inhabitants of that village, took the following method for redress. In the name of the town-treasurer, a petition was preferred to the sheriff-depute of Orkney, against 108 inhabitants of the town of Stromness, bearing, that the persons named had each of them in their possession goods and merchandise to the value of L. 100 Sterling, which had been imported, or otherwise traded for by them, or by other persons unfreemen, contrary to law; and, therefore, praying warrant of arrestment. The warrant was granted accordingly, ' To fence and arrest all and sundry moveable goods, merchant goods, &c. pertaining to the persons named, to remain under sure fence and arrestment, till sufficient caution is found that the same shall be made furthcoming to the complainer, as accords of the law.'

Upon this extraordinary arrestment, the treasurer brought a process of furthcoming before the Sheriff of Orkney, as if it had been an arrestment *debiti servandi causa*; and it being referred to the oaths of the defenders, what foreign goods they had in their possession in which they had unlawfully trafficked, decret went against those who refused to depone, discerning each of them in the sum of L. 50 Sterling, as the supposed value of the smuggled goods.

In a suspension of this decree, the LORD ORDINARY found, ' That by the act of Parliament 1672, the unfree goods and merchandise, supposed to be in the suspenders hands, are attachable by arrestment: That a process of furthcoming upon these arrestments is competent for declaring the goods escheat: That the goods so arrested in their hands, and values thereof, may be proved by their oaths; and, therefore, repelled the reasons of suspension; but reponed the defenders against the decret, in case they take a day to depone in the furthcoming.'

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The privileges of a royal burgh, granted by acts of Parliament against unfree traders, entitle only to feize and escheat unfree goods apprehended, not to insist in a process of damages.