

[17th March, 1846.]

WILLIAM RISK, Wine Merchant, Dumbarton, *Appellant*.

WILLIAM MUIR, Collector of Tonnage Dues at Glasgow, and the Secretaries of the Trustees for improving the navigation of the River Clyde, *Respondents*.

Statute.—Where, of two proposed constructions of a statute, one would work great inconvenience and the other very little, a Court is entitled to bring to its aid the balance of convenience in endeavouring to fix upon the construction which should be adopted.

Ibid.—Where the inhabitants of a burgh were exempted by statute from the payment of river dues upon their goods, provided they gave proof and made affidavit of the property, if required, *found* that, under the terms of the statute, the giving of evidence and making affidavit were conditions precedent to the exemption, without which the goods were not entitled to be passed duty free leaving the right to the duty to be afterwards ascertained.

THE respondents were the officers of a public body of trustees, empowered by Acts of Parliament to improve the navigation of the river Clyde, and to levy tonnage dues on all vessels and cargoes passing along the river, as a fund for defraying the expense of the improvements.

The first statute appointing the trustees was the 6th George IV. cap. 117.—By that statute the trustees were empowered to levy a certain rate of dues. The next statute was the 3d and 4th Vict. cap. 118.—That Act enlarged the powers of the trustees, altered the rates of dues leviable by them, and gave them power, in case of refusal of payment, to seize the goods or the tackle of the ships liable, and sell them judicially for payment.

Previous to the passing of either of these statutes, the burgesses of Dumbarton enjoyed an exemption from the payment of any river dues, in respect of a contract made in the

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year 1700, between the burgh of Dumbarton and the city of Glasgow. This exemption was dealt with in the following manner by 6th Geo. IV:—

The 44th sect. was in these terms:—“ And whereas certain
“ claims of exemption from the foresaid rates and duties have
“ been brought forward by the royal burgh of Dumbarton, on
“ the ground of a contract entered into, in the year 1700,
“ between the said burgh and the Corporation of the city of
“ Glasgow; and whereas the said harbour or quays at the
“ Broomielaw were, in terms of the said recited Act of the 49th
“ year of the reign of his late Majesty, made over and conveyed
“ to the trustees under the said recited Act, as also the whole
“ duties authorized to be levied at the said harbour or quays by
“ the said Act of the 10th year of the reign of his late Majesty,
“ from which duties the said exemption is claimed by the said
“ burgh of Dumbarton; be it therefore enacted, That, from and
“ after the passing of this Act, the trustees hereby appointed
“ shall be, and they are hereby empowered and required to
“ relieve and indemnify the said Corporation of the said city of
“ Glasgow from and against the whole claims of exemption, or
“ otherwise, which may be founded on the contract.” The
45th section was as follows:—“ And whereas doubts have
“ arisen as to the real import and effect of the said contract,
“ and it is expedient provision should be made relative thereto,
“ be it therefore enacted, That, from and after the passing of this
“ Act, all ships, vessels, barges, lighters, and boats whatsoever,
“ *bona fide* belonging in property to the burgesses resident
“ inhabitants of Dumbarton, shall, with the exception and
“ limitation after mentioned, be exempted from payment of any
“ part of the foresaid harbour duties leviable at the harbour of
“ the Broomielaw, or at any of the ports, whether above or
“ below the said harbour, at which the said trustees are entitled
“ to levy any of the harbour or quay duties granted by the said
“ recited Acts or this Act; saving and excepting always vessels

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“ vessels moved by the power of steam, which shall be ex-
 “ emptied only in the event of their making a direct voyage
 “ from Dumbarton to Glasgow, or from Glasgow to Dumbar-
 “ ton; declaring that the voyage shall be considered to be a
 “ direct one, even although the said steam-vessel should, in the
 “ course of the voyage, touch at Greenock or Helensburg, or at
 “ any place between these places and Glasgow; and saving and
 “ excepting also vessels which may load coals at Glasgow, not
 “ *bona fide* for the use and consumption of the inhabitants of
 “ Dumbarton within the said burgh.”

And the 46th section was in these terms:—“ And be it
 “ further enacted, That all cargoes and goods *bona fide* the pro-
 “ perty of burgesses resident inhabitants of Dumbarton, shall
 “ be exempted from all river or tonnage duties leviabie below
 “ or to the westward of the new bridge of Glasgow, under the
 “ present or the said recited Acts, save and except coals not
 “ *bona fide* for the use and consumption of the said burgesses
 “ within the said burgh of Dumbarton: provided always that
 “ the burgesses, inhabitants of the said burgh of Dumbarton,
 “ under a penalty of 20*l.* for each offence, shall at no time, and
 “ in no manner, and by no means whatever, cover the vessels
 “ and goods belonging to unfreemen or others, under the colour
 “ or pretence of being their own, in any time coming; and
 “ shall, if required, be obliged to prove their property in the
 “ said goods and vessels as accords with law; and to make
 “ affidavit before any of his Majesty’s Justices of the Peace to
 “ the truth of their statement, if required, on behalf of the said
 “ trustees.”

And the 3d and 4th Vict. cap. 118, contained the following
 proviso in its 62d sect.:—“ Provided farther, and be it enacted,
 “ That nothing in this Act contained shall take away, prejudice,
 “ limit, abridge, or impair, any of the privileges or exemptions
 “ secured by the said recited Act passed in the sixth year of the
 “ reign of his Majesty King George the Fourth, from payment

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“ of rates and duties, in respect of ships, vessels, barges,
 “ lighters, boats, cargoes, and goods *bona fide* the property of
 “ burgesses resident inhabitants of Dumbarton, all which are
 “ hereby reserved under the provisions and regulations relative
 “ thereto, contained in the said recited Act: provided always,
 “ that the said privileges and exemptions shall not be held or
 “ construed to extend to the use of the said wet-dock on the
 “ lands of Windmill Croft, or to the rates or duties hereby
 “ authorized to be levied for the use of the said wet-dock.”

The method pursued by the trustees and their lessees of the river dues in regard to allowing the exemption to the burgesses of Dumbarton, had not been uniform; but on the whole, it rather appeared that for many years after the passing of the statutes, the goods of the burgesses of Dumbarton had been allowed to pass free of charge, the owners making affidavit afterwards as to the property. As a rule for the future, the trustees on the 24th September, 1840, addressed the following circular by their collector to the burgesses of Dumbarton:—

“ Sir,—I am directed by the Clyde trustees to inform you,
 “ that, in consequence of the great difficulty of preventing
 “ evasion of the river and harbour duties, arising chiefly from
 “ the present practice of levying the duties payable by bur-
 “ gesses resident inhabitants of Dumbarton, they are com-
 “ pelled to proceed, in future, strictly in conformity with the
 “ provisions of the Act of Parliament 3d and 4th Vict., cap.
 “ 118, sec. 75.

“ I have accordingly to acquaint you, that, from and after
 “ the 1st of October next, goods and vessels arriving at, or
 “ departing from, the harbour, must pay *immediately upon their*
 “ *arrival or departure*, and that if any exemption is claimed by
 “ persons representing themselves burgesses resident inhabit-
 “ ants of Dumbarton, they must *first* ‘*prove* their property in
 “ ‘ the said goods and vessels as accords with law, *and*, in each
 “ ‘ case, *make affidavit* before any of Her Majesty’s Justices of

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“ ‘ the Peace to the truth of their statement.’ The nature of
 “ the proof will, of course, depend a good deal on the circum-
 “ stances of each case; but the trustees think they are giving a
 “ very modified interpretation to the provision in the Act, by
 “ insisting that at least one witness, or some equivalent docu-
 “ ment or evidence shall be adduced, as proof of ownership, in
 “ each case, besides the oath or affidavit of the person claiming
 “ the exemption *before any such exemption is conceded*. Of
 “ course, unless this is done, full payment of the rates and
 “ duties will be exacted in each case, but so as to occasion as
 “ little inconvenience as possible. The trustees instruct me, in
 “ the case *of the vessel* and of the duties being exacted before
 “ the statutory proof and affidavit are furnished, to return the
 “ amount to such parties as may, within ten days of the date of
 “ the exaction, produce to me the prescribed proof and affidavit.
 “ In regard to goods, it is plain that this indulgence cannot be
 “ granted; and the trustees have no alternative, in relation to
 “ them, but to exact the full rates and duties on each occasion
 “ of their arrival at, or departure from, the harbour, unless the
 “ proof and affidavit required by the Act of Parliament, *be pre-*
 “ *viously, or at the time, furnished.*”

In the month of March, 1841, the respondents as authorized by the statutes to sue on behalf of the trustees, presented a petition to the Sheriff of Glasgow, setting forth that “ William Risk, grocer, at or near Dumbarton, had by himself, or others acting for him,” shipped on board a steam-boat two puncheons of whisky, the tonnage duties on which, in terms of the statute, amounted to one shilling and sixpence. That Risk, or the persons in charge of the goods, delayed, neglected, or refused to pay these dues. That the respondent Muir had seized one of the puncheons of whisky, in payment of the dues, which Risk still persisted in delaying or refusing to pay, and therefore, praying a warrant for sale of the whisky.

In the course of a proof which was allowed by the Sheriff,

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the respondents proved by one of their servants, that when the whisky was unloaded from a cart, for the purpose of being shipped, it was without any address upon it; that he asked who it was for, and was answered that it was for the appellant; that the captain at this time came up, when he inquired of him “if he
 “ had an affidavit for the whisky, or was going to pay the ton-
 “ nage dues, being 1s. 6d.; when the captain said he had no
 “ affidavit, and that his instructions were not to pay the dues;
 “ that he thereupon told the captain that he doubted he would
 “ require to seize one of the puncheons; that the carter did not
 “ exhibit to him a permit or any document showing to whom
 “ the whisky was to be conveyed; that the captain did not
 “ exhibit a permit to him, but he thinks he said he had one and
 “ he was told he had one before the vessel sailed; that he did
 “ not make any enquiry for the defender, before seizing the
 “ whisky, nor did he know whether he was present.”

Another servant of the respondents confirmed this evidence, and swore that “both the affidavit and payment of the dues
 “ were demanded and refused before the seizure was made, and
 “ that one of the puncheons was thereupon seized.”

The Sheriff found that the seizure was lawfully made, and that no proof or affidavit having been produced, the presumption was raised and remained, that the whisky was not the *bona fide* property of the appellant; he therefore repelled the defences and granted warrant for sale of the whisky, in terms of the statute.

The appellant advocated the cause and pleaded,—

“ 1. The rates and duties which the pursuers are, by the
 “ statutes libelled on, entitled to levy from goods shipped at the
 “ Broomielaw of Glasgow, do not apply to goods *bona fide* the
 “ property of burgesses resident inhabitants of Dumbarton.
 “ All such goods, as well as the vessels belonging to the bur-
 “ gesses of Dumbarton, are, by the statutes in question, ex-
 “ pressly exempted from all river or tonnage dues leviable below

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“ or to the westward of the new bridge of Glasgow, under any
“ of the statutes libelled on.

“ 2. The defender being a burghess and resident inhabitant of
“ Dumbarton, and the puncheon of whisky now in question,
“ which was shipped for his behoof at Broomielaw, being *bona*
“ *fide* his property, no rate or duty, such as that now demanded
“ by the pursuers, could lawfully be claimed or levied, in res-
“ pect of the said puncheon of whisky, (which was illegally
“ seized by the pursuers, and is still retained by them,) or of
“ the other puncheon of whisky which accompanied the same,
“ and which was delivered to the defender.

“ 3. The defender having been always willing, whenever he
“ should be required to do so, to prove his property in the
“ said two puncheons of whisky, as accords with law, and
“ to make affidavit before any of Her Majesty’s Justices of
“ the Peace, in terms of the statute, and of the practice which
“ has uniformly taken place under the statutes, till September,
“ 1840, when a new and illegal rule, not authorized by the
“ statutes, was introduced by the trustees, the seizure of the
“ puncheon of whisky in question was utterly illegal, and the
“ warrant now demanded for its sale is wholly unauthorized by
“ the statutes libelled on.

“ 4. While the defender is willing to give any such proof as
“ accords with law, and to make the affidavit required by the
“ statute, that the goods in question are *bona fide* his property,
“ and so are not liable to the rates or duties claimed, the pur-
“ suers have not made a relevant statement to entitle them to
“ claim the said rates or duties upon the said goods, or to
“ demand the warrant of sale for which they have applied, in so
“ far as they have not alleged that the said goods, though
“ shipped for the behoof of the defender, and bearing to be his
“ property, are not *bona fide* the property of the defender, or
“ that the defender is not a burghess and resident inhabitant of
“ Dumbarton. On the contrary, the pursuers have not denied

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“ that the goods in question are *bona fide* the property of the
“ the defender, and that he is a burgess and resident inhabitant
“ of Dumbarton; and, nevertheless, though the statutes libelled
“ on do not apply to such goods, but on the contrary, expressly
“ exempt them from all the rates or duties thereby authorized
“ to be levied, the pursuers insist upon illegally levying the
“ rates or duties upon the goods in question.

“ 5. The trustees for improving the navigation of the river
“ Clyde and the harbour of Glasgow, are not entitled, under
“ the colour of more easily levying the rates or duties autho-
“ rized by the statutes under which they act, to impose them
“ upon goods or vessels to which the said statutes do not apply,
“ but which, on the contrary, are expressly excepted from the
“ operation thereof. Neither are they entitled to impose arbi-
“ trary conditions not authorized by the statutes, which would
“ have the effect of making goods or vessels, which are
“ expressly excepted from the operation of the statutes,
“ liable for the rates or duties thereby imposed on the other
“ goods or vessels to which the statutes apply.

“ 6. The pretended conditions lately imposed by the trus-
“ tees, would have the effect of repealing or rendering nugatory
“ those express enactments of the statutes, whereby goods and
“ vessels, *bona fide* the property of burgesses resident inha-
“ bitants of Dumbarton, are exempted from the rates or duties
“ thereby authorized to be levied, and the said conditions,
“ whereby it is intended to exclude or impair the privilege
“ thereby given to the burgesses resident inhabitants of Dum-
“ barton, being illegal in themselves, and contrary to the
“ express provisions of the statutes, and to the practice which
“ has uniformly prevailed since the statutes came into operation,
“ and till September, 1840, cannot receive any effect from
“ courts of law. It appears from the statutes, as well as from
“ the practice which has followed upon them, that all goods or
“ vessels which apparently belonged to burgesses resident inha-

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“ bitants of Dumbarton, were *prima facie* entitled to the exemp-
 “ tion in question; but that, nevertheless, it should be com-
 “ petent to the trustees in any case, where they might deem this
 “ necessary, to require such burgesses to prove their property
 “ in the said goods or vessels as accords with law, and to make
 “ affidavit if required; this, however, being the exception and
 “ not the rule, because it was only if required that any proof or
 “ affidavit was to be given. It was plainly only where there
 “ was reasonable ground for doubting whether the goods or
 “ vessels were *bona fide* the property of burgesses, that any
 “ such proof was to be required, and even then this was not
 “ made a condition precedent of the exemption, but only an
 “ investigation to test whether the goods or vessels were really
 “ entitled to the exemption which had been claimed, and
 “ already allowed.

“ 7. The puncheon of whisky in question, as well as the
 “ other puncheon which accompanied it, being *bona fide* the
 “ property of the defender, who is a burgess resident inhabitant
 “ of Dumbarton, and he being willing to prove his property in
 “ the same, as accords with law, and to make affidavit before a
 “ Justice of Peace, in terms of the statute, whenever required to
 “ do so by the pursuers, the warrant now applied for to sell the
 “ said puncheon of whisky, for payment of the rates or duties
 “ libelled, is grossly illegal, and in seizing and detaining the
 “ said puncheon of whisky, the pursuers have been guilty of a
 “ spuilzie; and the warrant now craved by them being contrary
 “ to the order of law, and in violation of the statutes libelled
 “ on, ought to be refused with full expenses.”

The respondents on the other hand pleaded,—

“ 1. By the Act 3rd and 4th Vict. cap. 118, the parliamen-
 “ tary trustees of the river Clyde are empowered, by themselves
 “ or their collector, to levy and recover the river and tonnage
 “ duties, therein specified, upon all goods shipped at the Broo-
 “ mielaw: and in the event of delay or refusal in the payment

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“ of such duties, they are entitled to seize, take, and detain the
“ goods; and after the lapse of three days from such seizure, if
“ payment be still withheld, to apply for judicial authority to
“ appraise and sell the goods, for payment of the duties and
“ charges, reserving the owner’s right to claim the surplus, if
“ any remain.

“ 2. As the parliamentary trustees, in virtue of the statutes
“ under which they act, have a real lien over the goods shipped
“ at the Broomielaw for payment of the river and tonnage
“ duties, and as their right is declared to be preferable to any
“ attachment, arrestment, or claim by any other person, they
“ are entitled to make this preference effectual by operating
“ payment of the duties before the goods leave the harbour, and
“ are not bound to rest satisfied with a mere personal claim
“ against the owners or consignees of the goods.

“ Though the resident burgesses of Dumbarton have a right
“ to claim exemption from the river or tonnage duties on goods
“ belonging to them, they are bound, when required by the trus-
“ tees, not only to prove their property in the goods, as accords
“ with law, but also to make affidavit before a Justice of the Peace
“ to the truth of their statement, in terms of the Act 6th Geo. IV.
“ cap. 117, sect. 46; and according to the sound construction
“ of this statute, the parliamentary trustees are entitled to
“ require the proof and affidavit from all persons claiming this
“ privilege before the exemption is allowed, and before the
“ goods are removed from the harbour.

“ 4. More particularly, as the parliamentary trustees are
“ specially authorized and empowered by the Act 32d Geo. II.
“ cap. 62, sect. 22, to make such orders and rules, and give
“ such directions for collecting the duties ‘as they shall think
“ ‘ most necessary and conducive to the ends for which the
“ ‘ same are granted,’ and as public notice was given to the
“ resident burgesses of Dumbarton, that where exemption from
“ the payment of duties was claimed, the right to such exemp-

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“ tion must be established in the manner pointed out in the
 “ statute before it could be allowed, the parliamentary trustees
 “ and their collector were entitled to enforce that regulation in
 “ reference to the goods in question.

“ The parliamentary trustees and their collector are en-
 “ titled to a warrant of sale, in terms of the prayer of the
 “ original petition; because, at the time the goods were shipped,
 “ they required an affidavit that they were the property of a
 “ resident burgess at Dumbarton, and the person in charge of
 “ the goods refused or failed to produce an affidavit, or to pay
 “ the duties; and also, because the right to the exemption
 “ claimed by the advocator has never been established in the
 “ the manner pointed out in the statute, and the duties still
 “ remain unpaid.”

After some proceedings with a view to proof of the appel-
 lant's right of property in the whisky, and his character as a
 burgess of Dumbarton, both of which he established, the Lord
 Ordinary (*Ivory*) pronounced the following interlocutor:—

“ Finds, that, by the 6th Geo. III. c. 117, sec. 46, the effect
 “ of which is expressly saved and reserved by 3d and 4th Vict.,
 “ c. 118, sec. 56 and 62, it is enacted, ‘ That all cargoes and
 “ ‘ goods, *bona fide* the property of burgesses resident inhabit-
 “ ‘ ants of Dumbarton, shall be exempted from all river or
 “ ‘ tonnage dues leviabie below or to the westward of the new
 “ ‘ Bridge of Glasgow, provided always that the burgesses
 “ ‘ inhabitants of the said burgh of Dumbarton, under a penalty
 “ ‘ of 20*l.* for each offence, shall, at no time, and in no manner,
 “ ‘ and by no means whatever, cover the vessels and goods
 “ ‘ belonging to unfreemen or others, under the colour or
 “ ‘ pretence of being their own in any time coming, and shall, if
 “ ‘ required, be obliged to prove their property in the said
 “ ‘ goods, &c., as accords with law, and to make affidavit before
 “ ‘ any of His Majesty's Justices of the Peace to the truth of
 “ ‘ their statement, if required:’ finds that the two puncheons

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“ of whisky here in dispute, were, on the 26th February, 1841,
“ the date of their seizure libelled, *bona fide* the property of the
“ advocator, and that, at said date, the advocator was a burghess
“ resident inhabitant of Dumbarton; and therefore finds that the
“ said whisky was, by the express terms of the above enactment,
“ exempt from all duties under the said statutes: finds, that, so
“ standing the fact, even though the advocator had, on the 26th
“ February, been required, in terms of the enactment above
“ quoted, to prove his property in the said whisky, and to make
“ affidavit before a Justice of the Peace to the truth of his state-
“ ment, and had at the time failed to do so, this would not have
“ been sufficient to subject the said whisky in a duty, from
“ which the statute expressly declared it to be exempted; and,
“ more especially, that all claim under this head must have been
“ excluded from the moment it was made to appear that the
“ statutory ground of exemption (*viz.*, that the whisky was *bona*
“ *fide* the property of a burghess resident inhabitant of Dum-
“ barton,) did truly apply thereto: but, *separatim*, finds that no
“ such requisition was in terms of the statutes, either then, or
“ at any other time, before the presentment of their application
“ to the Sheriff, made upon the advocator, on behalf of the
“ respondents: finds, on the other hand, that the advocator did,
“ from the first, and, more especially through his agents, in their
“ letter of 2d March, 1841, being several days before the pre-
“ sentment of the respondents’ application, express his readiness
“ to make the statutory affidavit, and, otherwise, to comply in
“ all points with the terms of the statutes, on their behalf, when
“ required by the trustees (respondents): finds that this offer
“ on the advocator’s part was not only, throughout the corres-
“ pondence which preceded the present proceedings, evaded and
“ put aside by the respondents; but farther, that the said
“ respondents, in libelling their application to the Sheriff, did
“ not therein allege or set forth, as the ground of said applica-
“ tion that the advocator had refused or failed to comply with

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“ any requisition on their part, and, moreover, did not even
 “ make any such requisition upon the advocator in their said
 “ application itself, or in any other way call upon the advocator,
 “ or give him an opportunity to respond to or obtemper such
 “ requisition, until it was at last stated for them, in their minute
 “ above referred to, ‘ that they are willing to hold the certified
 “ ‘ copy of the permit as a sufficient adminicle of evidence that
 “ ‘ the goods belonged to the advocator at the date libelled, if
 “ ‘ supported by the production of an affidavit that he was then
 “ ‘ a resident burgess of Dumbarton, and that the goods were
 “ ‘ *bona fide* his property:’ finds that, in these circumstances,
 “ and on a sound construction of the statutory requirements,
 “ there was no sufficient legal ground laid for a sale of the said
 “ whisky, in terms of the prayer of the respondents’ application;
 “ and, more especially, finds that the advocator having now, in
 “ compliance with the respondents’ requisition, made affidavit
 “ to the effect demanded of him, there is not now ground either
 “ for subjecting the said whisky in the statutory duties, or
 “ consequently for selling the same, in order to satisfy the said
 “ duties: therefore, upon the whole matter, sustains the reasons
 “ of advocation, assoilzies the advocator, and decerns.”

The respondents reclaimed, and on the 15th February, 1844, the Court pronounced the following interlocutor:—

“ Alter the interlocutor of the Lord Ordinary; find, that the
 “ trustees were entitled under the Act of Parliament 6th Geo.
 “ IV. c. 117, entitled ‘ An Act for amending three Acts for
 “ ‘ enlarging the harbour of Glasgow and improving the naviga-
 “ ‘ tion of the river Clyde to the said city, and for other
 “ ‘ purposes therein mentioned,’ to make the requisition which
 “ was made by their collector or officer of an affidavit as to the
 “ two puncheons of whisky being the property of the respon-
 “ dent, William Risk: find, that as their right to make such
 “ requisition, and the fact that it was actually made, was denied
 “ by the said William Risk, who contended that the goods

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“ ought to have passed duty free, in respect of the permit
“ brought with the said two puncheons, or of the address, if
“ any, said to be on the casks, the trustees were entitled to
“ present the petition to the Sheriff, with the prayer for a
“ warrant to sell for payment of the duties: find, that the said
“ petition was opposed, on the ground that the detention of the
“ goods was illegal, and that the trustees or their officer could
“ not legally demand the affidavit or other proof at the time of
“ the shipment, or, on the failure of such production, to detain
“ and seize the goods: find, that the Sheriff was entitled to
“ give the judgment on the pleas stated; and to the extent of
“ the above findings adhere to the interlocutors of the Sheriff,
“ so far as they repel the defences, but recal the interlocutors of
“ the Sheriff, in so far as they grant warrant for the appraise-
“ ment and sale of the puncheon of whisky actually detained;
“ remit to the Sheriff, with instructions to order the trustees to
“ deliver up the said puncheon of whisky.”

The appeal was against this interlocutor.

Mr. Turner and *Mr. Anderson* for the Appellant.—The right of exemption in favour of the burgesses of Dumbarton, recognized by the statute, was not thereby conferred upon them for the first time. It was a right already existing under the contract between the two burghs of Glasgow and Dumbarton. The statute, therefore, should receive such construction as is most compatible with the free and ample enjoyment of this right. To hold that the statute gives the respondents a right, in the first instance, to stop the goods of burgesses of Dumbarton until the latter have proved their property in the goods, and that the giving of such proof is a condition precedent to the benefit of exemption, is, in fact, to annihilate the privilege; as the expense and inconvenience of giving such proof, either by going from Dumbarton to Glasgow, or instructing an agent in Glasgow, for the purpose, will in most cases exceed the benefit

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to be derived by the exemption. In the present instance the river dues exacted did not exceed 1s. 6*d.*, and the expense of giving the proof required would have much exceeded that sum in the most moderate way of giving it conceivable.

The statute is precise and unqualified in the terms in which it confers the right of exemption; all that the proviso does is to give the respondents, where they have grounds for suspicion, a right to require evidence of the property, but no power is conferred upon them to stop the goods until the requisition is complied with. Their protection in that respect is in the further proviso of a penalty upon the burgesses, in case of their attempting fraudulently to give the benefit of the exemption to goods, the property of persons not burgesses. The heaviness of the penalty being no less than 20*l.* for each offence, makes it manifest that this was the intention of the legislature.

Even if the trustees had, under the statute, power to detain the goods in the first instance, it could only be in a case where they had reasonable ground for suspicion that they were not the property of the person they were represented to belong to, or that he was not a burgher. Here it was notorious to the respondents that the appellant was a burgher, and no suggestion was ever made that the whisky was not his property. On the contrary, in the very petition for a warrant of sale he is called a burgher, and is stated to have shipped the whisky by himself or others acting for him.

Mr. Solicitor-General and Mr. Bethel for the Respondents.

LORD CHANCELLOR.—My Lords, the question in this case appears to me to be circumscribed within very narrow limits. It turns entirely upon the construction of the 46th section of the Act of the 6th Geo. IV. That section of the 6th Geo. IV. remains in force, notwithstanding the Act of the 3rd & 4th Vict., and, in fact, it is adopted and may be considered as incorporated into that Act of Parliament.

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Now, it appears, that by the Acts of Parliament that are referred to in the case, the Trustees of the Clyde Navigation are entitled to raise certain tolls upon goods shipped at Glasgow, but the clause to which I have referred exempts the burgesses of Dumbarton resident in that town from the payment of these tolls. In the 46th section there is a proviso that the burgesses of Dumbarton shall not cover the goods of other persons under that grant of exemption, and that they shall, if required, prove that the goods are their own, and make an affidavit for that purpose and in confirmation of that statement. Now I consider this proviso in the nature of a condition. They are entitled to the exemption upon the conditions stated in the proviso, and one of the conditions is, that they shall prove, if required, that the goods belong to themselves, or that they shall, if required, make an affidavit to that effect. If this, then, is to be considered in point of construction, as I think it is, a condition, it follows that if that condition is not complied with, the goods, though belonging to a burgher, and a burgher resident in Dumbarton, are liable to the payment of tolls precisely in the same way as if they belonged to any other person, and the trustees of the tolls are entitled to detain the goods until the tolls are paid. That, I understand, is the construction of the Act of Parliament, and it was in pursuance of that construction that the goods in question were detained.

Now, it is said that great inconvenience would result to the inhabitants and burgesses of Dumbarton, if this were to be considered as the true construction of the Act of Parliament. It does not appear to me, when I advert to the circumstances of the case, that any considerable inconvenience would arise. If goods are shipped at Glasgow for any foreign port, or for Dumbarton, they must be shipped by the burgher of Dumbarton, or by his agent. He must know, therefore, beforehand, the act that he is about to do, and he may be prepared with the necessary affidavits. If goods are shipped from a port, consigned to

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him at Glasgow, and they are to proceed from Glasgow to Dumbarton, consignments of that description do not take place without notice, and in that case he would have an opportunity of making the necessary affidavit. It is said he may be absent from home at the time. If I am correct in saying general consignments of that kind do not take place without notice, then before he leaves home, or by the post when he is absent from home, he would have an opportunity of forwarding to his agent at Glasgow, the necessary affidavit for that purpose; and even supposing him to be from home, and the goods to arrive whilst he is absent without sufficient notice, what would be the effect? The goods would not be delivered to his agent, his agent would not be entitled to take possession of them until such an affidavit were obtained; and in any part of the Queen's dominions, a day or two's correspondence would be sufficient to obtain the affidavit. The utmost inconvenience he would sustain would be this: that the goods would not be delivered for a day or a couple of days. It appears to me, therefore, that the inconvenience on that side, if it exists at all, is very inconsiderable.

On the other side, the side of the trustees, the inconvenience is very great indeed, and may be a growing inconvenience every day as people get habituated to these transactions, for if goods are shipped at Glasgow, belonging, as they may be represented, to a burghess of Dumbarton, and to be shipped to a foreign port, and the goods may not be detained until it is ascertained whether or not they were properly represented as belonging to the burghess of Dumbarton, what remedy have the trustees for the recovery of the tolls? The goods may be shipped—they may be represented as belonging to some individual, a burghess of Dumbarton—the vessel proceeds to its destination, and in what way are the trustees afterwards to recover the tolls? They cannot recover them from the burghess, he might show that they were not his property, and then they could not be recovered from anybody, and under such circumstances, the trustees who

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are public officers, appointed for public purposes, might be defrauded to an almost indefinite extent.

It appears to me, that when we take the balance of convenience on the one side and on the other, the inconvenience of the construction contended for by the appellant is so great, as much to outweigh the inconvenience of the construction contended for on the other side. When you are looking at the construction of an Act of Parliament, you must look to the reasonable construction of the terms that are found in the Act in the first place, and you may properly bring in aid the inconvenience that would arise from any particular interpretation. If you find that the inconvenience of a particular interpretation would be very great, and that the words of the Act of Parliament justify another interpretation, you are justified in putting that interpretation on the Act which avoids the inconvenience, because that is a fair medium by which to ascertain what was the intention of the legislature in passing the Act.

Another question has been made in this case by the counsel for the appellant, with respect to the affidavit.—It was supposed that the affidavit was not properly required in this case. It appears to me that all was done that was necessary—the agent of the burgess was required to produce the affidavit—he did not produce it, he gave no reason for not producing it—he did not ask for time for that purpose; if he had asked for time for that purpose, it was possible that time might have been allowed to him, and he might have obtained the affidavit in the course of a few hours. It appears to me that all was done that was necessary, in order to entitle the party to detain the goods, and that under such circumstances the interlocutor should be affirmed.

LORD BROUGHAM.—My Lords, I am entirely of the same opinion with my noble and learned friend, and as he has gone so fully into the reasons for that opinion, in which reasons

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also I entirely agree with him, it becomes unnecessary that I should trouble your Lordships with more than a single word. The question is one of the narrowest in point of extent, and lies within the most confined limits it is possible to imagine; and I own, that from the beginning, notwithstanding all the zeal and diligence which has been shown by the learned counsel arguing for the appellant, I have never been able to remove myself from the view I took in the very outset, that here is an exemption from the payment of those dues in favour of the burgesses of Dumbarton, for their own goods and for those goods alone; that this exemption is given to them upon a certain condition, not merely that the goods should be their own, and that they should not colourably cover other men's goods, so as to extend the exemption from them, to whom alone it was intended to be conveyed, to others, to whom it was not intended to be conveyed; but that over and above the penalty of 20*l.* denounced on the fraudulent act, for the sake of preventing fraud, (prevention being more convenient than penalty, and less costly,) there should be the further condition of the proof to be given, and of the affidavit of the party who was the owner, that the goods were his;—if this condition be not complied with, there is an end of the exemption;—if there is an end of the exemption, the burgess has no more right to escape the payment of the dues for those goods, than a stranger would have who is not a burgess of Dumbarton; and the want of compliance with that condition of the affidavit, is just as much a destruction of the exemption, a prevention of that exemption extending to the goods of the burgess, as if the fact, which is a different case, and entirely immaterial here, as if the fact failed, and as if the goods were not his: the test of the goods being his, is one and one only, namely, the complying with that condition; that being the case, all the consequences follow, and among others the right to stop and seize—all the consequences follow which flow from there being no exemption in favour of the party.

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Those are the words of the 46th section of the Act of the 6th of the late King George the Fourth, upon these words the whole question turns, and those words are not in the slightest degree deviated from; and that enactment is not in the least degree done away with or modified by the Act of the 3d and 4th of the Queen, in the 62d section, for that section has a proviso to retain the privileges, “That nothing in this Act
 “ contained shall take away, prejudice, limit, abridge, or impair
 “ any of the privileges or exemptions secured by the said recited
 “ Act, passed in the 6th year of the reign of His Majesty King
 “ George the Fourth, from payment of rates and duties in respect
 “ of ships, vessels, barges, lighters, boats, cargoes, and goods, *bona*
 “ *fide* the property of burgesses resident inhabitants of Dum-
 “ barton, all of which are hereby reserved,” but how reserved?
 “ under the provisions and regulations relative thereto, contained
 “ in the said recited Act,” that is to say, the Act of the 6th of George the Fourth, chapter 117, section 46, bringing the question therefore back entirely to that section; and to whether that section does not apply to the argument in the way described, and enforced by the learned Judges below, and in which my noble and learned friend and I quite concur. If it does so *cadet questio* the whole question turns on that, and if there is a condition precedent by that section, then the more recent Act of the 3d and 4th of Victoria only lets in that Act, and does not in the least degree alter it.

With respect to the mode of requiring the affidavit, I entirely agree with the view taken by my noble and learned friend. I am not saying whether it would be sufficient to have a general requisition by their proclamation and circular, that is quite immaterial, because there is here a particular inquiry, therefore be that ever so necessary it is no fact in the case.

An attempt is made to show that this is connected with the 20*l.* penalty; be it so, I do not care whether it is or not, it may be for aught I know connected with that penalty, but it is con-

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nected with it as a remedy of a larger and more convenient nature, and of a more beneficial nature to the party entitled to the dues than the mere imposition of the penalty, which can only punish the party for having offended, and, perhaps by way of example, deter others from offending in that behalf. But a better and more fruitful remedy is given by way of prevention, by this condition precedent which is annexed to the enjoyment of the exemption.

In conclusion I beg to state, that I have read with great attention, more than once, the argument, which is very elaborate, and as it always is, coming from that quarter, the very able and acute argument of my Lord Moncrieff; and it gives me little satisfaction to be compelled, as I think I am by a sense of justice, to say, that I do not go along with my Lord Moncrieff in the kind of censure which seems to run through his judgment of the conduct of those trustees. I really cannot see in the conduct of these gentlemen any ground for the suspicion which his Lordship appears to have laboured under, that they were endeavouring to get rid of the rights of the burgesses altogether, and seeking to do that indirectly which they were by law incapacitated from directly and openly doing. I can see nothing in their conduct for the reasons given by my noble and learned friend, of the great inconvenience to which they would have been exposed if they had not recourse to this remedy. I can see nothing in this conduct except that they have acted prudently and rightfully with a due regard to their own interest, and to that security which the law in the enactment so often alluded to has given. I thought it fit to add that, because my noble and learned friend, although his argument went to prove the point, did not specifically advert to it. I am therefore of opinion that the interlocutor should be affirmed.

LORD CAMPBELL.—My Lords, I need only say that after listening to the very able and zealous argument on the part of

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the appellant, I likewise think that the judgment appealed from ought to be affirmed. I do not feel that there is any weight in the objection that was brought forward, that there was no jurisdiction here by reason of the admission that the goods were the goods of a burghess of Dumbarton, because if a burghess of Dumbarton is only entitled to exemption from these duties, upon performance of a condition which he has not fulfilled, then he is not entitled to the exemption, and his goods are in the same situation as the goods of the rest of mankind; and it is not disputed that there would have been jurisdiction here, if the goods had not belonged to a burghess of Dumbarton.

Then that brings us to the great question, whether at the time of the shipment of the goods this affidavit may be required. The section upon which it all turns, the 46th section of the 6th of George the Fourth, certainly admits of two interpretations: one may be that the affidavit should be made at the time of the shipment, another after the shipment if required. I must say that after attentively considering the words of this section, and the object of the Act of Parliament, I have had no hesitation in coming to the conclusion, that the affidavit may be required at the time of shipment; that seems the natural and grammatical construction to be put upon the words. This is a condition upon which the exemption is awarded to the burghesses of Dumbarton.

Well, then, the argument of convenience, as has been very powerfully stated by my noble and learned friend, certainly assists us in the doubtful construction of an Act of Parliament; and I must say that all the convenience is in favour of that interpretation, which says that the affidavit may be required at the time of shipment, for that course of dealing may clearly be put in practice. If there be an affidavit required at the time of shipment, it may be made either by the party for whose goods the exemption is claimed or on behalf of that person; and the Act of Parliament may be so put in force, but it might

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be utterly nugatory if you were to say that the affidavit may not be made then, but that an obligation is laid on the owner of the goods at a remote period of time to make this affidavit, because you cannot say that he could really be compelled to swear what is false, and if he refuses to make the affidavit, what is the remedy? The thing is done—the goods have been shipped—you cannot indict him for not making an affidavit which is false; and no action could be maintained against him for refusing to do that which would amount in fact to paying. For these reasons it seems to me that the argument, on the ground of convenience, is strongly in support of the judgment which the majority of the Judges have pronounced I therefore think that the interlocutor should be affirmed.

I am sure nothing we say or adjudge can have the slightest tendency to injure the inhabitants of Dumbarton. They are clearly entitled to this exemption; and I hope they will continue to enjoy it, and that there will be no vexatious attempt made in the slightest degree to impair that to which they are entitled. I express a strong hope, and I am sure that my noble and learned friends join in that, that instead of there being vexation, every possible sort of accommodation will be afforded by the trustees to the inhabitants of Dumbarton.

Ordered and adjudged, That the petition and appeal be dismissed this House, and that the interlocutor, in so far as therein complained of, be affirmed with costs.