

any new article of commerce, which may come in place of other articles formerly in request which had been in use to pay custom.

And, with respect to the practice of burghs, it is believed the Court has uniformly and repeatedly found, so often as the question has occurred, that they have no power to impose any new duty or custom whatever: Thus, very lately, the Court found the town of Edinburgh had no title to exact an impost on cyder or perry, as these liquors were not mentioned in their grants, and no such duty had been long in use of being levied, No 69. p. 1940.

The Court were clearly of opinion, that the exaction of this new duty was illegal on the part of the magistrates. Neither did the *bona fides* alleged by the tacksmen appear to be well founded from the circumstances of the case, so as to set aside the Justices' sentence, however they might be entitled to relief from their authors, the magistrates: And, therefore, judgment was pronounced as follows:

' Find the letters orderly proceeded against William Butler and James Smith for the two sums of L. 4 and L. 8, both Scots money, charged for; but find the magistrates of Burntisland obliged to relieve them thereof: And decern against all the parties for payment; and find the magistrates liable to the chargers in expences: And suspend the letters *simpliciter* as to the imprisonment of the suspenders till payment.'

Act. *Al. Bruce.*

Alt. *Dean of Faculty.*

Clerk, *Gibson.*

*Fol. Dic. v. 3. p. 102. Fac. Col. No 163 p. 48.*

1775. July 13.

ALEXANDER STEWART *against* JOHN ISAT.

No 104.

ISAT, a brewer in Gorbals of Glasgow, being sued before the Justices of Peace, at the instance of Stewart, collector of the impost on bear and ale in Glasgow, as having contracted an arrear of said impost, which also extended over the Gorbals, he brought the cause before this Court by advocacy, alleging the Justices were incompetent, and pleading several defences upon the merits; in particular, that he was charged with more than the magistrates had been in use to charge others in the same situation with himself. He averred, that the magistrates had not been in the use of demanding from any brewer, liable in the payment of the duties, more than 10d. *per* barrel; that he had been partially singled out by the magistrates, and charged with 1s. 1d. *per* barrel, being 3d more than had ever been demanded from any other person; and he maintained, that this was one of those cases wherein the supreme Court ought to interpose, and give him relief.

*Answered* on the part of the collector: That, as it was not alleged, that the barrels or firkins of ale, with which the defender was charged, were over-numbered, or that the arrear with which he was charged, exceeded the duty laid on

Magistrates of a burgh, having power by special grant to levy a duty on beer and ale, may not charge it unequally upon the persons liable in such duty, under the pretence, that, though an ease be given to some as to the duty in question, yet a general parity is preserved, in respect of their subjecting themselves to another tax.

No 104. by the act, that there could be no doubt that he was well-founded in his present charge ; and that there could not be any ground for a suspension of a charge which proceeded entirely upon, and was authorised by, express statutes of the legislature. And, in vindication of the magistrates, the following facts were stated, viz.

That, though the magistrates thought themselves entitled to levy the full duty of two pennies in the pint, laid on by the act of Parliament, from all those upon whom it was imposed ; yet, in order that the tax might be borne equally, they had been in the practice of charging some of the persons subjected thereto with a smaller duty than what they levied from the rest : That the reason of this distinction had arisen from this circumstance, that some of the persons who were subjected in the duty of two pennies in the pint, pay dry multure to the town, while there were others of them who did not : That those brewers who paid dry multure were in a worse situation than those who did not ; and, therefore, in order to put these two classes of men as much upon a footing as possible, the magistrates had been in the use of giving an ease of some part of the duty imposed upon ale, to the persons liable in multure duty, whilst the full duty was levied from the brewers not subjected to the multure : That the practice had been, to charge these last with 13d. *per* barrel, while 10d. only had been levied from the others : That Mr Isat, the defender, had, till very lately, been in the use of paying dry multure to the town ; and that, during this time, the collector of the impost, in conformity to this distinction, had been in the use of charging him only with 10d. *per* barrel, the sum levied from those who did pay dry multure duties ; but that, within this short time, Mr Isat had refused to pay dry multure duties ; upon which account, the magistrates had directed the collector of the impost to charge Mr Isat with the full duty of 13d. *per* barrel, so long as he refused to pay the multure duties ; and, therefore, that Mr Isat's cry against the magistrates, of his being singled out, or subjected to any hardship, was groundless in fact, and injurious to the magistrates, who had no other object in view than that of justice to all concerned.

The following judgment was pronounced, to which the Court afterwards adhered, on a reclaiming bill and answers :

‘ Find, that the magistrates of Glasgow, in the execution of the act of Parliament, can only charge the duty in question equally upon the inhabitants liable in such duty.’

*Act. Hay Campbell, Craig.*

*Alt. M'Laurin.*

*Clerk, Campbell.*

*Fol. Dic. v. 3. p. 103. Fac. Col. No 180. p. 98.*