

June 12, 1827. ' the said cashier and the said Banking Company are entitled
 ' to their expenses in the Court below: And it is further or-
 ' dered, that the cause be remitted back to the Court of Session
 ' in Scotland, to proceed according to the aforesaid declarations,
 ' as shall be just.*

Appellant's Authorities.—Dictionary of Decisions, ("Res inter alios.") Bell's Com.
 2d vol. p. 407; 3d edition.

Respondent's Authorities.—Bell, vol. 1, p. 232.

RICHARDSON AND CONNELL,—ALEX. MUNDELL, Solicitors.

No. 49.

BUDGE and Co. and Others, Appellants.—

MAGISTRATES OF EDINBURGH, Respondents.—

Statute 25 Geo. III. c. 28.—Found, (affirming the judgment of the Court of Ses-
 sion,) that, under this statute, the Magistrates of Edinburgh have right to levy im-
 post-duty from all vintners and tavern keepers within their bounds, on all foreign
 wines and other liquors specified in the act, consumed within the taverns, whether
 the vintners themselves imported those liquors, or purchased them from other im-
 porters who had not paid the duty; but that if the Magistrates so levy the duty, they
 cannot assess the tavern keepers in the commutation tax, in respect of the taverns
 where the liquors are sold and consumed.

June 13, 1827.

—
 2D DIVISION.
 Lord Macken-
 zie.

By royal grant, dated 1st April 1671, the Magistrates of
 Edinburgh were authorized to levy a certain impost on every
 pint of certain wines, and other liquors, ' importando et ven-
 ' dendo infra dictam civitatem de Edinburgh,'—' solvendum
 ' per venditores et cunctos alios inuectores dictos.' This grant
 was ratified by Parliament, 11th September 1672. In 1785,
 the statute 25 Geo. III., c. 28, was passed, by which it was
 enacted, (§ 59,) that all grants and ratifications in Parliament, in
 favour of the city of Edinburgh, ' for payment of the impost or
 ' duties on French, Rhenish, brandy wines, &c. shall subsist in
 ' force and effect, respecting all vintners, keepers of taverns or
 ' inns, and all others who keep public houses, shops, cellars, or
 ' other places, wherein these liquors, or any of them, are or shall
 ' be consumed by drinking, and sold for the purpose of their being
 ' consumed by drinkers; and that the Magistrates of Edinburgh
 ' shall have full power and authority to continue to collect and

* This appeal was heard by the Lord Chief Baron.

‘ levy the same, from all and every person of the before men- June 13, 1827.
‘ tioned description, living and residing within the said city of
‘ Edinburgh.’ It also declared that the imposts ‘ shall be abo-
‘ lished, and discharged to be levied and collected, so far as re-
‘ spects every private family, and all others who do not fall un-
‘ der the description of vintners, and others herein before men-
‘ tioned. And it is hereby declared, that grocers, and others
‘ retailing such liquors, do not fall within the said description,
‘ unless the said liquors shall be sold and drunk in their shops,
‘ houses, warehouses, or offices;’ and in place thereof (§ 62) it
was provided, ‘ that, whereas the revenue of the city of Edin-
‘ burgh will be diminished by the aforesaid abolition of the im-
‘ post on wines, foreign spirits, and foreign ale and beer con-
‘ sumed in private families, be it enacted by the authority fore-
‘ said, that at the said term of Martinmas next, the city of
‘ Edinburgh, and the Lord Provost, Magistrates, and Town
‘ Council thereof, and their successors, for themselves, and on
‘ behalf of the community thereof, in aid of the common good
‘ and patrimony of the burgh, shall have full power and authority
‘ to assess, tax, levy, and collect, from all and sundry the inhabi-
‘ tants of the ancient royalty of the city of Edinburgh, and the
‘ inhabitants of the new town of the extended royalty, who at
‘ present are, or might have been subjected to the aforesaid im-
‘ post, the sum of one pound per cent of the valued rent of their
‘ houses and possessions, and that yearly and each year.’

Founding on these grants and acts of Parliament, the Ma-
gistrates raised an action of declarator against Budge and Co.,
and other tavern-keepers and vintners in the city, concluding
that it should be declared, ‘ that they, in virtue of the grants
‘ recited, and of the exercise of the rights of levying impost
‘ duties, and other duties following thereon as aforesaid, have
‘ an undoubted right and title to collect and levy from all vint-
‘ ners, &c. the impost or duties before specified, on all the li-
‘ quors mentioned in the statute, which are and shall be sold in
‘ their houses, and that without regard to the circumstance
‘ whether they themselves shall have imported those liquors, or
‘ purchased them from others who may have imported the same ;
‘ and also, it should be found and declared, that the pursuers
‘ have likewise a right and title to assess, tax, levy, and collect,
‘ as a commutation on the impost of wines, foreign spirits, fo-
‘ reign ale and beer, consumed in private families, from the said
‘ David Budge, &c. the sum of one pound per cent of the valued
‘ rent of their houses and possessions, and that yearly and each
‘ year.’

June 13, 1827. In defence it was maintained, that although the defenders were liable for wines imported by themselves, yet, in regard to wines purchased from wine merchants or other importers, they were not liable. And that they were specially exempted from the commutation tax.

The Lord Ordinary found,* ‘ that the pursuers, in virtue of
 ‘ the grants and acts of Parliament libelléd, have right to levy,
 ‘ from vintners, keepers of taverns, inns, public houses, shops,
 ‘ or cellars, within the limits libelled, or other places where
 ‘ French, Spanish, Rhenish, or brandy wines, or the other fo-
 ‘ reign liquors libelled, or any of them, are consumed by drink-
 ‘ ing, or sold for the purpose of being there consumed by drink-
 ‘ ers, the impost duty libelled on all such liquor as is so con-
 ‘ sumed, or sold for the purpose of being consumed in these
 ‘ houses or places of sale, and that without regard to the cir-
 ‘ cumstance, whether the defenders themselves shall have im-
 ‘ ported these liquors, or purchased them from others who may
 ‘ have imported the same, unless the said impost duty shall
 ‘ have previously been paid upon the said liquors; in which
 ‘ case, finds, that the pursuers can have no farther claim for any
 ‘ duty on account of the same, and decerns and declares accord-
 ‘ ingly, as against these defenders, and ordains them to desist
 ‘ and cease from troubling and molesting the pursuers and their
 ‘ successors in office, in the exercise of their rights so found and
 ‘ declared in all time coming. But finds, that the pursuers have
 ‘ not right to levy the commutation duty libelled, in respect of
 ‘ the taverns, inns, hotels, shops, cellars, or other places where
 ‘ the said liquors are sold and consumed, in such manner as to
 ‘ be liable in impost duty; and finds it not alleged that the de-
 ‘ fenders have any other houses within town, and therefore as-
 ‘ soilzies the defenders from the conclusions of the libel respect-
 ‘ ing the said commutation tax, and decerns, and found neither
 ‘ party entitled to expenses. Note, The Lord Ordinary con-
 ‘ siders the case of Burns v. Hay, as affording much light in
 ‘ this question. He thinks that, prior to the act 25 Geo. III.
 ‘ c. 28, the magistrates might certainly have levied from vint-
 ‘ ners the impost on account of liquor of the kinds libelled,
 ‘ which was knowingly sold by them for consumption in their
 ‘ taverns, without having previously paid duty, as in cases of
 ‘ smuggled liquor, or liquors imported by a member of the Col-

* The Lord Ordinary found the action ‘ incompetent, in respect to the defenders not named in the summons;’ but this point was not appealed.

' lege of Justice, or under a special warrant of exception, and June 13, 1827.
 ' yet sold to a vintner, (which might happen fairly from neces-
 ' sity, as under legal diligence, &c.) and if this was law before
 ' the statute, the Lord Ordinary thinks it remains law now ;
 ' the statute giving no exception to vintners, &c. in respect to
 ' liquor sold by them for consumption in their taverns. The
 ' Court went further in Burns' case, where they found that li-
 ' quor must pay impost on being sent to the cellar of the vint-
 ' ner, &c. from that of the merchant. If that be law, a fortiori,
 ' the magistrates may make their present claim for impost on
 ' liquor actually used by the vintners. The Lord Ordinary does
 ' not consider the argument of the defenders to be sound, that
 ' the liquor has already paid duty when it is imported by a wine
 ' merchant, who pays the commutation tax for his own house.
 ' The Lord Ordinary has no conception that a wine merchant
 ' pays the tax on his individual house, as commutation for im-
 ' post on all the wine he imports. He thinks that this tax is
 ' now paid generally by the inhabitants, in commutation for the
 ' impost formerly payable by the inhabitants generally. But he
 ' thinks this tax is not payable at all by anybody in commuta-
 ' tion for the impost tax payable by vintners, &c. which indeed is
 ' really and ultimately paid by their customers, who are not al-
 ' ways, or perhaps chiefly, inhabitants at all. This view it is
 ' that induces the Lord Ordinary to think it must be unjust to
 ' charge the commutation tax on the taverns, &c. because that
 ' would be just in substance subjecting the guests or customers
 ' of the vintners to both taxes at once, *i. e.* to a tax on the
 ' wine, and yet also to a commutation tax on the tavern. If the
 ' vintners had distinct houses for their own residence, a different
 ' question might arise as to the commutation tax on these. But
 ' this is probably of little moment.' And the Court, on the 3d
 March, 1826, adhered.*

Budge and Co. appealed.

The House of Lords ordered and adjudged, that the inter-locutors complained of be affirmed, with L.100 costs.†

* Sec 4 Shaw and Dunlop, No. 340.

† The Master of the Rolls heard this appeal.