

No 87. David II. Robert III. James VI. Charles I. ratified in Parliament, containing *liberas consuetudines, cum firmis burgi, parvis custumis, tolloneis, annuis reeditibus, libero portu, custumis, aliis juribus, privilegiis, pertinentiis*—free ports or harbours, customs, annualrents, free fairs, market days, liberties, privileges; and produced a table containing the rates of that part of their customs which was the subject of the present question. They observed, that the table was distinguished into two heads, of *bridge custom* and *causeway custom*; the former being the duty exacted upon goods carried northwards, the latter the duty levied upon goods carried southwards; and they offered to prove, that, in virtue of their charters, they had been in the immemorial possession of the duties stated in the table of customs, as now explained; which, even independently of any title in writing, they contended, would support their right to the customs in question.

The LORD ORDINARY pronounced the following interlocutor: ' Finds the defence pleaded for the Magistrates of Ayr, defenders, viz. That, for time past memory, they have been in possession of levying the tolls and customs now challenged upon goods carried by sea from the harbour of Ayr northwards, or southwards; the first under the appellation of *bridge custom*, the other under the appellation of *causeway custom*, as distinguished in their table of the town's customs, dated the 3d November 1730, relevant; and ordains the pursuers to say, Whether they mean to dispute the possession, as above qualified, or to offer proofs of interruption sufficient to bar the effects of such possessions?' To this judgment the Court adhered; and afterwards, on advising the proof adduced, gave final judgment, as follows:

' THE LORDS find, That the defenders have right to exact the tolls and customs now challenged.'

Act, Crosbie.

Alt. G. Ferguson, Macquoen.

Clerk, Tait.

Fac. Col. No 149. p. 8.

1775. March 10.

CHARLES EARL of ABOYNE, JOHN EARL of HYNDFORD, JOHN LORD COLWILL, and Others, *against* The MAGISTRATES and TOWN-COUNCIL of Edinburgh.

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Immemorial possession and practice, where there is any dubiety upon the words of a grant, as not being sufficiently comprehensive, become the rule for exacting, as

THE pursuers insisted in an action of declarator relative to the extent and mode of levying those duties possessed by the town of Edinburgh, commonly called their impost-duties.

The Magistrates and Council of Edinburgh got what is called the impost-duty, by a grant from Charles the second in 1671, which was ratified in Parliament by an act dated the 11th of September 1672.

The grant proceeds on the narrative, '*adeo ut nisi prorogatio impositionis super vino aliisque exteris commoditatibus importandis concedatur omni tempore futuro, &c.*' and, therefore, gives to and incorporates with the town of Edinburgh:

‘ Impositionem et custumam summæ duorum solidorum monetæ Scotiæ super unoquoque Scotico pincto vini Gallici, summæ quatuor solidorum ejusdem monetæ super unoquoque pincto Scotico vini Hispaniensis, Rhenensis, lie brandy wines, extraneæ aquavitæ, aquis recoctis 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 Edin. vel quasvis libertates ejusdem postea specificat., solvend. per venditores et cunctos alios inveciores dicti vini specierum prædict. Extranei zythi et cerevisiæ ad dict. civitatem et territoria ejus spectan. viz. South and North Leiths, Canon-gate,’ &c. And the modes of collecting and levying the duty are expressed in the following words: ‘ Cum potestate dicto. præfecto, balivis, et consulibus, eorumque factoribus, et famulis eorum nominibus colligendi et percipiendi, dictas impositiones, &c. Quinetiam potestatem facimus dict. magistratibus et concilio Edinburgeno istiusmodi acta et statuta sancire, pro collectione earundem, prout eis idoneum videbitur, ac juramentum partibus ministrare de quantitate earundem commoditatum per illos vendend. intra quævis dict. locorum; ac jurare recusantes carceri mancipare, vel eos pro confitentibus tenere, de quantitatibus pro quibus eorum juramentum exigetur, et summariam executionem desuper exercere:’ And farther, the grant ordains letters of horning to pass at the instance of the magistrates of Edinburgh, for payment of the said duty.

The points which the pursuers insisted should be declared, were arranged under the seven following heads: *1mo*, That no wines are liable in the duty of impost, but French, Rhenish, Spanish, and brandy wines: *2do*, That all other wines whatever, and all spirituous liquors distilled in England or the British Colonies, may be imported without payment of any such duty: *3tio*, That cyder, perry, London sweets, porter, ale, and beer, may likewise be imported from England free of impost: *4to*, That no private persons are liable in payment of impost for any liquors imported by them for their own consumpt, and that it can only be exacted from those who import such liquors for sale within the city: *5to*, That the impost-duty does, in no case, extend over the Canon-gate, North Leith, Portsburgh, Potter-row, Bristo, or Pleasance, or any other of the suburbs, liberties, and territories of the city of Edinburgh, in which it has not been regularly in use to be levied: *6to*, That the defenders have no power to exact impost at the port of Leith: And, *lastly*, That they have no right to seize or to confiscate any liquor for which the impost has not been paid, but must sue for the impost of such liquors as are liable therein, in the ordinary course of law, or in terms of the grant.

The defenders *argued*, in substance, That the words of the grant were sufficient to comprehend all wines whatever; and it is evident that there is no good reason for making a distinction. *2do*, Usage and possession are the best interpreters of grants; and the courts of justice in every country have relied upon

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well as for the mode of levying particular duties.

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Neither was the present question new in this Court ; for, by a grant of King Charles II. 1678, and by acts of Parliament in 1695, afterwards continued in 1707, a duty on ale, wine, brandy, and other commodities therein mentioned, was given to the burgh of Aberdeen, in words almost the same as those whereby the impost is granted to the town of Edinburgh. In this grant there is no mention made of Port or Madeira wine ; which two species of wine had come only into recent use, and consequently importation, into the town of Aberdeen ; in the year 1739, when a suspension was brought at the instance of some of the merchants against the collector of impost, the chief ground of which was for having it ascertained, that the grants could not be extended to wines imported from Portugal ; but the Court found, November 21. 1739, ‘ That Portuguese and ‘ Madeira wines were comprehended under the grant.’—The present case, however, is considerably stronger than that of Aberdeen ; for it was there admitted, on both sides, that the importation of Port and Madeira into the burgh of Aberdeen was a trade just newly commenced ; so that the argument, arising from the immemorial usage of the payment of impost upon the importation of those species of wines, could not be urged in support of the exaction then insisted upon by the collector of the Aberdeen impost : But, in the present case, the defenders are not now making any demand which is not sanctioned by long usage and the acquiescence of parties.

Upon the 2d of August 1774, the Court pronounced the following judgment :  
‘ THE LORDS find, that the defenders have no power to exact impost merely  
‘ upon importation at the port of Leith, or any other ports within the grant ;  
‘ and find, that cyder and perry may be imported free of impost ; and decern  
‘ and declare accordingly : But, in respect that it is not denied that the defen-  
‘ ders have been in the uniform practice of levying impost upon the other  
‘ liquors from which the pursuers claim to be exeemed, find, that the impost is  
‘ exigible for these ; and that the defenders are entitled to continue in the  
‘ method hitherto used for rendering the said impost or duty effectual ; and  
‘ find, that the defenders are entitled to make the grant effectual over the  
‘ Canongate, South and North Leith, Portsburgh, Potter-row, Bristo, and Plea-  
‘ sance, and the other suburbs, liberties, and territories of the city of Edinburgh  
‘ therein mentioned ; and that private persons are liable in the said impost for  
‘ any liquors imported by them, for their own consumpt ; and therefore assoilzie  
‘ the defenders from the other conclusions of the declarator, and decern.’

The pursuers having reclaimed against this judgment, upon advising the petition and answers, they were ordained to give in a condescendence of what they offered to prove ; but, on considering the condescendence given in, the Court

found, That the pursuers had not condescended sufficiently to entitle them to a proof; and, thereafter,

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‘ Adhered to their former interlocutor; with this variation, ‘ That, in order to give the proprietor opportunity to claim, no confiscation, for not payment of the duty, shall proceed till at least eight days after the seizure, and then not without an application to the magistrates by the seizure-makers, and their warrant thereupon.’

Act. *H. Erskine, Crosbie.*Alt. *L. Adv. Montgomery, et Rae.*

Clerk, ———.

*Fol. Dic. v. 3. p. 104. Fac. Col. No 171. p. 83.*1778. *January 29.*

JAMES FREELAND, and Others, *against* The INCORPORATION of WEAVERS in Glasgow.

THE incorporation of weavers in Glasgow, by their seal of cause from the town in 1528, ratified by a charter from the Crown in 1681, are vested with the exclusive privilege of carrying on the ‘ webster-craft’ in that burgh.

At a period long subsequent to these charters, the manufacture of silk-cloth was introduced into Glasgow; and, afterwards, manufactures of mixed cloths, composed of silk with linen, or cotton, were also introduced.

James Freeland, and others, engaged in the business of weaving these manufactures within the town, though not entered freemen of the incorporation.—The incorporation of weavers brought a declarator for ascertaining their exclusive right to weave the cloth in question within Glasgow.

*Pleaded in defence for the unfreemen:* The exclusive privileges of incorporations being restrictions on trade and improvement, are to be strictly interpreted.—Silk-weaving, a new manufacture, not known in Glasgow till long after the seal of cause to the weavers, and ratification of it, is not reached by these grants.

This seal of cause requires, that the person admitted be found ‘ a sufficient, expert tradesman of the craft.’—When silk-weaving was introduced, none of the craft at Glasgow were capable to try a silk-weaver’s sufficiency in his art, which is totally different from theirs. The craft, therefore, could not, in consistence with their own seal of cause, have demanded that a silk-weaver should enter with them. Though a few have of late entered voluntarily with the craft, that will not give them any right to oblige others to enter with them which they had not before.

*Pleaded for the Incorporation:* The seal of cause is conceived in general terms, comprehending every branch of weaving, not limited to such only as were practised at Glasgow at the time of the grant. It is of no consequence, therefore, that silk weaving was introduced posterior to the grants, which is the case with

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An exclusive privilege to carry on the webster-craft found to reach to silk-weaving, though not in use at the time of the grant.