

1781. *June 15.*

DAVID TOD and Others, *against* The MAGISTRATES and TOWN COUNCIL of St Andrews.

THE magistrates of St Andrews had imposed, under the denomination of a causeway mail, first a halfpenny, and then a penny, on each cart load of dung, sold to or carried off by strangers, from any inhabitant of the town. Several of the farmers in the neighbourhood, with some of the inhabitants of the town, brought an action of declarator, 'to have it found and declared, that the magistrates and town council had no right to impose new burdens, taxes, duties, or customs, either upon the inhabitants of the city, or on the lieges in general, who may have occasion to resort to the city with their horses, carts, or other carriages for dung, or any other materials for the purposes of agriculture, or otherwise, not particularly specified in their rights and charters, and occupied as such past the years of prescription,' &c.

THE LORDS unanimously decerned in the declarator, and found the defenders liable in expences.

Reporter, *Lord Justice Clerk.*

Act. H. Erskine.

Alt. Alex. Fergusson.

Fol. Dic. v. 3. p. 102. Fac. Col. No 58. p. 97.

No 106.
Magistrates
have no power
of imposing
taxes.

1783. *February 28.*

JOHN PATERSON and Others, *against* The MAGISTRATES and TOWN COUNCIL of Stirling, and the CORPORATION of WEAVERS in that Burgh.

By very ancient grants from the Crown, the town of Stirling possesses the right of holding weekly markets. For rendering this right effectual with respect to the selling and buying of yarn, the magistrates and town council, in 1687, and again in 1703, enacted, 'That unfree and country weavers should not be permitted to buy any linen or woollen yarn to be brought to the burgh for sale, except upon the public market place, and after eleven o'clock forenoon each market day.'

In 1715; the country weavers, in a process of reduction of these acts, obtained a decree of the Court of Session in their favour, changing the hour of the market from *eleven* o'clock to *nine* in the morning.

In 1777, Paterson, and others of the country weavers of Stirlingshire, instituted an action of reduction of that decree; in which they insisted for the unrestrained freedom of buying yarn in the market, each market day at any hour of the day, and likewise demanded that the burgesses and inhabitants, as well as other persons, should be prohibited from purchasing yarn except in open mar-

No 107.
The Court
of Session
considered
themselves
empowered to
change the
hour and o-
ther circum-
stances of
the public
market of a
royal burgh,
in opposition
to the regula-
tions already
established
by the council
of the burgh.

No 107. ket. The burgh, at that period, having been disfranchised, the parties called as defenders were certain temporary managers of the community, together with the corporation of weavers.

On report of the Lord Ordinary, the Court pronounced the following interlocutor. 'THE LORDS find, That the public yarn market of the burgh of Stirling shall, from the 15th day of April to the 15th day of August yearly, begin and open at the hour of seven in the morning; and from the 15th day of August to the 15th day of April yearly, at the hour of nine in the morning; and in time coming prohibited and discharged all the lieges, freemen as well as others, from purchasing yarn on the market days, but upon the public market place, after the market is begun and opened, as aforesaid, and not before; and decerned and declared accordingly.'

The cause having been appealed by the defenders to the House of Lords, was, by that High Court, remitted to the Court of Session, on purpose, that when the burgh should be restored to its privileges, the proper magistrates might be cited as parties. On the consequent renewal of the action, it was .

Pleaded for the defenders: By royal grants this community has obtained the right of holding markets; for effectuating which privilege they are entitled to enact by-laws and regulations. Immemorial usage and possession have placed that authority beyond the reach of challenge; and thus a right of property has been established, not to be violated from any notions of expediency, however urgent. A corporation surely, not less than an individual, may acquire a right; nor is there in the nature of that question any thing to hinder its acquisition. If it be a restraint upon commerce, it is not more so than what is occasioned by various privileges bestowed both on individuals and on corporate bodies; 14th January 1747, Corporation of Mary's Chapel *contra* Kelly; No 64. p. 1931; Taylors of Perth against Lyon, No 71. p. 1947. Should it be objected, that the powers of the Court are as ample now as they were in 1715, when they decreed an alteration in this matter, that indeed were not to be denied; but if in any case an unconstitutional authority has been usurped, it ought not to be followed as a precedent.

Answered: The grants or charters founded upon by the defenders, authorise not, in any degree, the arbitrary privilege which they now claim. Nor, though it be admitted that they have, independently, a right of framing by-laws and rules for the government of the market in question, will it follow that any specific ordinance thus introduced can acquire, by lapse of time, the stability of a right of property secured by possession, or by prescription. Adapted to the exigence of times and occasions, such regulations, from their very nature, can never be permanent, but must suffer change, according as the manners, the customs, or the ideas of mankind vary. Not the length of the period during which a political institution has subsisted, but the expediency and benefit of the measure itself alone, are the ground of its stability. The long duration of a grievance is a reason for bringing the more speedy relief. Indeed, the evil against which the

pursuers contend, is one that the legislature has already provided redress of. It is that of forestalling markets; for the object of the defenders, is to buy up the best part of the commodity in question before the market be open for the pursuers; a proceeding contrary to law; *Leges Burgorum*, cap. 16. *et seq.*; act 21. Parl. 4. James V.; act 150. Parl. 12. James VI.

THE COURT considered themselves as empowered to decree such alterations in the state of this market as seemed suited to the circumstances of the case. They now adopted their former interlocutor, settling the hour of market, and prohibiting, without any exemption whatever, the buying of yarn, except in the market place. See JURISDICTION.—Court of Session.

Reporter, *Lord Westhall.* Act. *Henry Erskine.* Alt. *A. Abercromby.* Clerk, *Home Stewart.* *Fol. Dic. v. 3. p. 102.* *Fac. Col. No 102. p. 161.*

1786. June 29.

ALEXANDER FERGUSSON, and Others, *against* The MAGISTRATES of GLASGOW.

THE charters from the Kings of Scotland, in favour of the magistrates and community of the town of Glasgow, contain a grant 'of the small customs of the ports, and of the bridge, and of the meal-market,' and of various other markets there specified; 'together with all other duties and customs of which they are or formerly were in possession, or which may happen to be imposed with consent of the council and community of the said burgh.'

An impost or custom had been immemorially levied on fish, oat-meal, and many sorts of vegetables sold within the town. But with regard to the article of potatoes, though the tacksmen of the markets had frequently exacted a trifling duty from the merchants, this was only a recent practice, and never universally submitted to.

In the year 1751, public markets had been erected by the magistrates. Afterwards, in 1781, they enacted, 'That for all potatoes brought into the town, and sold either in the public markets, or in the streets, or in shops, a duty of 2s. on each cart-load, and proportionally on smaller quantities, should be exigible by the collector of the town's revenue.'

Some of the inhabitants brought this regulation under challenge in an action of reduction; when it was

Pleaded for the magistrates: The administrators of royal burghs have an inherent power of levying, for the use of the community, certain small duties or customs on goods imported or sold within their jurisdiction. This is essential to the maintaining of a proper police. It has been exercised in every town in Scotland; and in Glasgow, it has been recognised by the Sovereign, to whom, by our ancient constitution, the prerogative of erecting corporations, with all

No 107.

No 108.

Magistrates in royal burghs have power to impose new duties or customs, on articles brought to market, or sold in shops, or elsewhere; but the Court of Session will restrict them if too high.