

SCOTT
v.
WILSON.



PRESENT,

LORD CHIEF COMMISSIONER.

1829.
Feb. 4.



SCOTT v. WILSON.

A finding that the magistrates of a burgh had no right to collect custom on barley ~~or other articles~~ not purchased in the market of the burgh.

THIS was an action of reduction of a decree of the Magistrates of Hamilton; of repetition of the sum decerned for, and of declarator that they had no right to exact custom on barley or other articles not purchased in the market of the burgh.


DEFENCE.—The defence relied on was, that by usage the Magistrates were entitled to exact custom on grain brought into the town, though purchased beyond its limits.

ISSUES.

“ It being admitted that, in the year 1823,
 “ and prior to the 25th day of April, in the
 “ said year, the pursuer brought into the town of
 “ Hamilton 100 bolls of barley, purchased be-
 “ yond the limits of the said burgh, for the
 “ purpose of being converted into malt, and used
 “ in the brewery of the pursuer.

“ Whether the defenders wrongfully exacted,
 “ or wrongfully caused to be exacted, from the
 “ pursuer the sum of 8s. 4d. Sterling, or any
 “ part thereof, as custom upon the said 100
 “ bolls, and the sums of L. 13, 8s. 5d. Sterling
 “ of expences, and L. 2, 15s. Sterling, as dues
 “ of extract, or any part of the said sums, to
 “ the loss, injury, and damage of the pursuer ?”

SCOTT
 v.
 WILSON.



Jameson opened for the pursuer, and said, The burgh was erected by a charter from the Duke of Hamilton, which gives them right to the duties, in a table made or to be made, but the only tables sanctioned by the Duke were applicable to fairs and weekly markets, not to grain bought beyond the burgh. The only right they have is to a duty on goods sold within the burgh, which may apply to shops, but not to the pursuer.

When the deposition of a witness examined in the Inferior Court was tendered in evidence, an objection was taken that the stamp required by the 4th and 8th sections of the Stamp Act then in force was wanting.

An unstamped deposition taken in an inferior court not admitted in evidence.

Cockburn.—The witness being dead, it is competent to prove statements by him at any time. This party pleaded on this proof before

SCOTT
v.
WILSON.

the Magistrates, and the expences in the issue are for proceedings on it.

Jeffrey.—No consent could cure this, as the Court are bound to look to it ; besides, this is a different case, as the Magistrates are the parties here.

LORD CHIEF COMMISSIONER.—When a person is dead, his statements made on the highway may be proved, but this being a deposition, is in a very different situation ; and if the pursuer relies on it, something more must be stated.

Cockburn.—The tacksman is a party to both actions, and his proof in the former case is in the same situation with ours. Even their original petition is not stamped, and no competent decree for expences could follow on it. This is an attempt to succeed by a trick, which would make a New Trial necessary, on the ground of surprise, as in the cases of Ronald, at Glasgow, and of Clark v. Thomson. They have attempted to supply the defect as to the petition by attaching a sheet of stamped paper.

Jeffrey.—We maintain that they were stamped in the Inferior Court.

LORD CHIEF COMMISSIONER.—I cannot in

this manner avoid a revenue law, but must enforce its regulation. This is not the question we are to try here ; but whether grain, in the situation in which this was, is liable in payment of the custom demanded ?

SCOTT
v.
WILSON.

Jeffrey opened for the defenders, and said, The pursuer wishes to raise a doubt as to the right of the Magistrates to collect what is the principal source of the revenue for maintaining the police of the burgh. Mere possession is sufficient to justify the collection ; and for sixty years custom has been collected at the shops, not the market. By the charter we have a right to custom on all grain ; and as the pursuer fails in establishing an universal practice of exempting grain, the verdict must be for the defenders.


Lawson, &c. v. Thomson, 5th August 1768. Mor. 1965, and 1 Hailes' Dec. 236.

Cockburn in reply.—This is to try the legality of a burgh tax ; and the tendency of all burghs being to encroach, they must show a clear title ;—here they have failed.

The exaction was wrongful, 1st, Because the decree of the magistrates proceeded on an unstamped proof, proceeding on an unstamped petition. 2^d, Because they have neither statute nor immemorial usage. This was laid down as law in the case of Angus and Magistrates

4 Mur. Rep. 339.

SCOTT
v.
WILSON.



of Edinburgh, and the bill of exceptions taken on that occasion was disallowed.

The only right by the charter of the defenders is to collect custom at the markets, and even if this includes shops, it will not affect the present case, as it must be on goods brought for the purpose of sale, but here the grain was brought for brewing.

LORD CHIEF COMMISSIONER.—Before proceeding to state to you the admission and the issue, I shall make a few observations, which are more for counsel than for you, and then I shall be in a better condition to show the principle, and how the proof applies to the practice.


Much has been said as to the proof not being stamped, and I still retain my opinion that it was inadmissible in evidence. If it had been stamped in the same way the petition was, the result might have been different, but it would have been better to have got the proof stamped, though I am not prepared to say, that if the stamp was paid, though the writing was on a different paper, that it is to be rejected as an unstamped document. There is much irregularity in the stamp attached to the petition, as there is no date upon it, but merely the title of the paper. I do not, however, mean to tell

you that on account of this irregularity you are to find your verdict. And even if we had the power to nonsuit, I am not sure that a nonsuit would have been the proper course. I shall therefore state it to you as a case totally independent of this, and which you are to consider on its merits.

Here there are two species of evidence. There are documents showing the right to impose a tax in the burgh, and there are witnesses to show how it has been used and exacted. The general doctrine on this subject is clear. There must either be a statute or uninterrupted uniform practice for a sufficient time to justify the exaction. In every case the doctrine must have reference to the facts, and the facts here are, that there is an act of Parliament and a charter by the family of Hamilton, enabling the town to impose taxes according to a table to be made; but the question remains, whether there is authority for what is here claimed, and the amount of the sum is of no importance.

You must attend to the admission as well as the issue, and if, on the whole case, you think that barley is exempted, then you will find for the pursuer, and he will get back what he has paid, but if not, then for the defender. The admission does not show where the barley was

SCOTT
v.
WILSON.




SCOTT
v.
WILSON.
~~~~~

purchased, but merely that it was beyond the burgh, and that it was for the purpose of manufacture. From the proof, independent of the admission, it might have been thought that there was a special exemption of barley bought in Glasgow ; but it is to be considered merely as a place beyond the burgh, and the term foreign, as used in the evidence, must be held applicable to all grain not the produce of the farms in the neighbourhood.

This issue is, Whether this was exacted wrongfully, or according to the right which was in the Magistrates of the burgh ; and the question is, how far this right has been made out or defeated ? Whether it has been established by a deed which could legally establish it ; or whether it is so made out, as to establish it on the practice. Legal authority consists in a statute, charter, or clear grant, or a presumption of such a grant, by a proof of steady well established practice of unresisted payment. As there is nothing in the act, the charter, or terms of the table to justify the exaction, the question is, Whether there is usage to establish such a grant ? And whether, on the whole circumstances of this case, the exaction was wrongful.

The statute, which was a private one, was

SCOTT  
v.  
WILSON.



intended to change the market-day, and to establish two fairs ; and there is no doubt the family had a right to grant the charter. The only question is, what they did grant ? The grant is to collect dues at fairs and markets, and a table as early as the charter imposes a certain sum on victual, which would include barley ; but does it apply to the circumstance here, or does it apply only to what is bought in fairs and markets. To meet this objection, evidence was given to show that the dues were collected in shops on other than market days, as well as in the market, and a usage seems established as to pot barley, though not sold in the public market. But the only question here is, Whether the pursuer's barley, according to the grants and usage, is liable ? and you will attend to the evidence given as to custom not being exacted in cases similar to the present.

On the whole, if you think the pursuer has made out his case, or that the defenders have failed to prove the usage, then you will find for the pursuer. It is a case of evidence for you, and you are not to be biassed by my opinion. On the deeds I do not think the case made out.

Mr Forsyth wished his Lordship to take a note of his direction to the jury.



GIBB & MAC-  
DONALD  
v.  
WATHEN & Co.

LORD CHIEF COMMISSIONERS.—You may take the exception to my directing them to find for the pursuer, unless they find the usage proved in favour of the defender.

Verdict—“For the pursuer.”

*Jameson*, for the Pursuer.

*Jeffrey and Forsyth*, for the Defender.

(Agents, *John Grainger*, w. s. and *Steuart and Sprott*, w. s.)

PRESENT,

LORD CHIEF COMMISSIONER.

1829.  
June 17 and 18.

GIBB and MACDONALD v. PAUL WATHEN,  
and Co.

Damages for fraudulently inducing the pursuers to enter into a contract, and for repetition of money paid under the contract.

THIS was an action of damages for fraudulently inducing the pursuers to enter into a contract; for repetition of L. 600 as over-payment under the contract; and of L. 1600, on account of short quantities furnished under the contract.

DEFENCE.—The defence on the merits was, that the defenders received and used a great part of the goods, and were indebted to the pursuers in the balance of the price.