

MAGISTRATES and TOWN COUNCIL of the	}	<i>Appellants;</i>	1783.
City of Glasgow, - - -			
MESSRS. MURDOCH, WARREN, and Co.,		<i>Respondents</i>	MAGISTRATES OF GLASGOW v. MURDOCH, &c.
House of Lords, 9th May 1783.			

STATUTE—IMPOST DUTY—EVASION.—The Magistrates of Glasgow are, by statute, entitled to a duty upon all ales and beer brought into Glasgow, from all the breweries in and about Glasgow, for consumption. Sometime after the passing of the act, parties erected a brewery in Anderston, which they conceived beyond the bounds of the act. The Magistrates, however, insisted on payment of their duty; Thereafter the brewers resorted to an agreement with Monro in Glasgow, to buy all their ales on the brewery. By this means he was the medium of still supplying the former customers of the brewers. Held this an evasion of the act, and that the brewers were still liable.

By the act 28th Geo. II. c. 29, renewing and extending former acts granting to the city of Glasgow, a duty on every pint of ale or beer, brewed, inbrought, vended, tapped, and sold within the said city and suburbs, and liberties thereof. This act was extended to the adjacent villages, or extended parts of the city, Gorbals, &c. There is this clause applicable to breweries erected in the immediate neighbourhood of Glasgow: “ And whereas, of late years, sundry
 “ persons have erected breweries in the *neighbourhood* of
 “ the city of Glasgow, and the said villages of Gorbals and
 “ Port Glasgow, and have imported large quantities of ale
 “ and beer into the said city and villages, for the consump-
 “ tion of the inhabitants thereof, and have refused to make
 “ payment of the said duties, by the foresaid acts granted
 “ and made payable, except upon such ale or beer as could
 “ be proved by the Magistrates and Council to have been
 “ brought into and sold within the said city and villages re-
 “ spectively; which proof is in many cases impracticable,
 “ or must be attended with great expense and trouble to the
 “ said Magistrates and Council and their collectors; and
 “ the said practice, if continued, will not only be of great
 “ discouragement to the brewers within the city and vil-
 “ lages, but will in a great measure frustrate the good in-
 “ tentions of this act. For remedying whereof, be it enacted,
 “ by the authority foresaid, That from and after the 1st May
 “ 1755, for and during the continuance of this act, it shall
 “ not be lawful for any brewer or seller of beer or ale living

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“ or carrying on his or her brewery, without the said city of
 “ Glasgow and liberties thereof, or without the villages of
 “ Gorbals or Port Glasgow, to import or sell any beer or
 “ ale into or in the said city, or villages of Gorbals and
 “ Port Glasgow, or the liberties and privileges thereof, un-
 “ less he or she do previously give notice to the magistrates
 “ of Glasgow, or their collector of the said duty, at their
 “ office of Glasgow or Port Glasgow respectively, and agree
 “ to be subjected to and charged with the payment of the
 “ said duty by the said former acts, and this present act,
 “ granted and made payable for all beer and ale which shall
 “ be brewed, by such brewer or seller of beer or ale, living
 “ or carrying his or her business without the said city and
 “ villages, and liberties and privileges thereof. And that
 “ every brewer or seller of ale and beer, who shall import
 “ or sell any ale or beer into the said city or villages, or li-
 “ berties, or privileges thereof respective, without having
 “ given such previous notice, and agreed as aforesaid, shall
 “ be charged with, and liable to the payment of the said
 “ duty, to the Magistrates and Council of the said city, or
 “ their collector or collectors respectively, for all ale or
 “ beer brewed by him or her during twelve calendar months
 “ immediately preceding him or her committing such
 “ offence.”

Before the passing of this act, a considerable brewery, called Grahamston, had been erected contiguous to one of the streets of Glasgow, and now making a part of that street, though beyond the royalty of the city of Glasgow. The object of the act was to include this brewery, as well as the other breweries in the neighbourhood of the city.

The respondents erected a large brewery at Anderston, which is a little westward of Grahamston, and a continuation of the same street, and only a few yards beyond the royalty.

At first the Brewery Company did not dispute their liability for the duty, and gave in their names as brewers accordingly; but, in course of time, having opened up a considerable export trade to Ireland and the West Indies, they applied to the Magistrates for exemption from such duty, as the ale was not brought into the city for sale. The Magistrates, though conceiving themselves not bound to grant their request, yet, to encourage trade, allowed them a drawback upon such ales so exported.

They made a further application for an exemption of such

ales and beer which they might sell without the city. This they refused. Whereupon the Brewery Company gave notice that they would sell no more ale or beer within the city.

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But they agreed with a person of the name of Monro to purchase from them the whole ales on the brewery. And they further advertised, that henceforth they had discontinued furnishing ales to customers in Glasgow, and would deal with all on the premises of their brewery. The agreement with Monro was such as to make them able still to answer the orders of their customers in Glasgow through him. It was alleged by the Magistrates that this agreement was a mere device, to evade the act, the object of it being to get free of the charge of duty as brewers.

Action was therefore brought for payment of the duties. The defence was, that since 1st July 1780 they had not imported into, or sold ale in the city, and therefore were not liable. Upon which, and after a proof, the Lords sustained the defence, and assoilzied the defenders. June 21, 1782.

Against this interlocutor the present appeal was brought to the House of Lords.

Pleaded for the Appellants.—The whole proceedings of the respondents as brewers, by the agreement in question, were a mere device to evade the act of Parliament. For the years previously, they were selling per ann. 21,049 gallons of ale to the inhabitants of Glasgow, and driving a prosperous trade within the city, independently of their export trade; and the only reason and motive of the agreement with Monro was, to escape the duty, and to deprive the revenue of the city of the impost which they were entitled to exact from them as brewers, within the intent and meaning of the act. Such being the obvious character of the transaction, law will not lend its sanction to support such a device.

Pleaded for the Respondents.—Although the act subjected brewers importing ale into the city of Glasgow to the duty in question, on all they should brew and sell within the city, yet this did not extend to all brewers whatsoever. It did not include brewers living without the city, and therefore could not include the respondents. They certainly were not liable for the payment of the duties which is the object of the present action, because, since July 1780, they have not imported or sold any ale or beer into the city of Glasgow, or liberties.

After hearing counsel,

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LORD MANSFIELD said :

“ My Lords,

“ The agreement with Monro was a device to elude the meaning of the statute 28 Geo. II. ; and therefore I move your Lordships to reverse the judgment below.” It was therefore

“ Ordered and adjudged that the interlocutor complained of be reversed. And it is declared, that the respondents, by selling beer and ale, upon the express condition of his selling the whole in the town of Glasgow, and making discounts and allowances, is a manifest evasion of the act of the 28 Geo. II., and ought to be considered as selling within the town of Glasgow by the respondents themselves.”

For Appellants, *Henry Dundas, Ilay Campbell.*For Respondents, *L. Kenyon, Thomas Erskine.*

(M. 15,585.)

LAURENCE, WILLIAM, CHARLES, MARGARET,
CHARLOTTE, THOMAS, FRANCES - LAURA,
GEORGE and ROBERT DUNDASES, Children
of the marriage betwixt Sir THOMAS DUN-
DAS of Kerse, Bart. and Lady CHARLOTTE
FITZWILLIAM, his Wife, - -

} *Appellants ;*

SIR THOMAS DUNDAS of Kerse, Bart.

} *Respondent.*

House of Lords, 21st May 1783.

REVOCATION—ENTAIL.—An entailer had reserved to himself power to alter and revoke the entail executed by him. He thereafter executed a will conveying the fee of his whole real estate in England and Scotland, according to the English form, and revoking all “ former and other wills.” Held that this latter deed was not effectual as a revocation of the entail.

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Sir Laurence Dundas, on the occasion of his son Thomas' (now Sir Thomas) marriage with Lady Charlotte Fitzwilliam, became bound to execute a conveyance of his whole lands and estates in Scotland, to himself in liferent, and in trust *quoad* the fee, for behoof of the first, second, third, and other sons of the said marriage, and their respective issue male. By this marriage contract power was reserved to destinate the line of succession, and to impose such condi-