

1681. *February 2.* The TACKSMEN of the IMPOST of EDINBURGH *against* ROBERT YOUNG and OTHERS.

THE town of Edinburgh having obtained from the king an imposition of a plack upon each pint of ale and beer brewen within their liberties, or imported within the same, being vented and sold; and there being a complaint, against this imposition, by the College of Justice, and the heritors of the neighbouring shires, there was an agreement amongst them to restrict this imposition to two pennies upon the pint, and reckoning the boll of malt, one with another, to yield twenty gallons of ale, which amounted to two merks on each boll of malt. Likeas it was agreed, that the impost should be paid by all within the liberty of the town, in that way, as being most easy to be known, without multiplying of oaths of the brewers by surveyors; who might from time to time have access to all the brew-houses within the town's liberties, and might gauge their mask-vats how much malt they might brew at a time, and might observe how oft they did brew, and thereby make a constant survey. According to which Robert Young and other two brewers being decerned,—

They SUSPEND, upon this reason:—That the impost by the king being upon the ale and beer vented and sold, there was no warrant to turn it upon the malt; and, though there had, yet it was no ground to presume twenty gallons for each boll of malt, seeing it is known that it could not yield above sixteen gallons of good sufficient ale or beer. *2do.* The impost was only upon ale and beer vented and sold, and this method puts it upon all ale and beer brewen, although not sold: whereas it is known that the brewers themselves have great families, and drink a great share of the brewings themselves, which should be free; and that they have oft-times spoiled browsts that cannot be sold; and frequently their barrels of ale or beer will be returned back to them as insufficient; in none of which cases they can be liable for the town's impost: but now the tacksmen insist against the brewers upon their oaths, and will not be satisfied with a survey; contrary to the settlement.

It was ANSWERED for the Tacksmen, That this settlement having taken effect by a constant custom of twenty years' acquiescence therein by all the brewers, and even by the suspenders, who had the benefit by the settlement; they cannot now resile therefrom, when there is but a year or thereby to run of the impost: nor can they pretend detriment by lifting the impost by malt brewen by brewers, or that twenty gallons is reckoned for the boll; because, the impost being upon every pint of beer or ale, the weakest as well as the strongest was liable. And though there be some small proportion of ale at three shillings Scots, yet it is known that there is a far greater proportion of small ale, and a greater proportion of penny ale; and therefore twenty gallons was fixed, upon the whole; wherein there is an act of the town-council twenty years ago, constantly observed; which is sufficient *inter concives*. And, as to the manner of probation, the law doth allow probation by witnesses, or by oath, at the pursuers' option; and therefore, though the pursuers use a survey, the surveyors are but witnesses, and the pursuers are not obliged to adduce them, but may refer the quantity to the defenders' oaths; especially seeing, *de consuetudine*, the brewers, if they acquiesce not to the survey, are always permitted to give their oaths. *2do.* It is known that the brewers use all devices to deceive the surveyors, by latent vats,

inclosed within a secret room, and not in their ordinary brew-houses, and by moveable eiks to their vats, which they can set on when they mask, and immediately thereafter take off; so that the gauging of their mask-vats by the surveyors cannot reach the true quantity of their brewing. And as to their spoiled brewings, they have always been allowed, upon showing the same to the surveyors. But they can have no abatement upon pretence of their own drinking, seeing all the heritors of the kingdom pay cess to be free of the excise of their own brewing; and therefore no brewer which hath no land can pretend that privilege, nor could any survey clear what were the brewers' own drinking, and therefore all behoved to go to oath. And as to taking back of barrels once sold and delivered, they are not obliged so to do, unless the drink were spoiled when delivered, and then it comes under spoiled drink; but if it be taken back upon the account of the strength, or not being well brewen, it can make no abatement.

The Lords found, That the Act of the Town Council, and long custom acquiesced to, was sufficient *inter concives*; and, therefore, sustained two merks upon the boll brewen by the common brewers: but found, by the same custom, that the survey should be the rule, unless the brewers offered their oaths; and that the spoiled drink should be allowed, upon being shown to the surveyors: but found no abatement to be given upon pretence of the brewers' own drinking, or of taking back of ale or beer once sold and delivered, except upon account of being spoiled: but found, that if the surveyors should discover and find any latent vat, or any moveable eik to a vat, or if such brewers as these were actually found, that such brewers should give their oaths, notwithstanding of the actual survey, as to their preceding brewing.

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1681. *February 2.* The MASTER of BALMERINOCHE *against* The LAIRD of POURIE.

THE deceased Lord Couper having, by a minute between him and the Laird of Pourie, sold the lands of _____; and Pourie being obliged, for the price, to pay 19,000 merks, or to allow the same in part of payment of the sum of 20,000 merks due by Couper to Pourie; there being mutual pursuits upon this minute, Pourie craved a progress of right, and to be relieved of the non-entry, in respect that the lands sold, holding ward of the Earl of Crawford, were in non-entry, whereupon Crawford and his donatar had obtained decret of general and special declarator; which being assigned to the Laird of Bandoch, he hath thereby uplifted the full rents of the lands for the year 1671, and sinceyne: and, therefore, Pourie being excluded, did obtain decret of pointing of the ground, upon his sum of 20,000 merks, out of the lands of Monifieth, sold by Balmerinoch to James Mauld of Balumbie. And Pourie is willing to quit the bargain; or otherwise, so soon as he shall be entered to possession, and the non-entry purged, to pay the 19,000 merks, with the annualrent thereof since he was entered to possession, except the years in which he was excluded by the non-entry: and, seeing the price was alternative, either to pay or allow, *electio*