

1771. *November 19.*

The MAGISTRATES, TOWN-COUNCIL, and COMMUNITY of DUMBARTON, *against*
The MAGISTRATES and TOWN-COUNCIL of the CITY of GLASGOW.

No. 7.

Interpreta-
tion of, and
the effect giv-
en to a public
statute.

An act of Parliament was passed in the 10th year of George III. entitled, “ An act to explain and amend an act made in the 32d of George II. for improving the navigation of the river Clyde to the city of Glasgow ;” by which the Magistrates and Town-Council of Glasgow were empowered to repair and enlarge the quay on the north side of the river at the Broomielaw, and to erect a new quay upon the south side of the river Clyde, opposite to the former. By a clause in the act, the Magistrates and Town-Council are authorised “ to levy, &c. one penny Sterling per ton, for all ships, barges, vessels, lighters, and boats, which shall be brought to the quays ~~af~~resaid, or either of them, or within the bounds and limits of such parts of the river Clyde, as the former rates and duties of ~~the~~ said Broomielaw quay were in use to be collected, &c. by virtue of the special grants or immemorial possession of the same ; and that in full of all anchorage and quay-dues formerly in use to have been paid to the city of Glasgow in name of Broomielaw quay-dues, except the cranage dues, which are hereby reserved to the said Magistrates and Council.”

The act was a public one ; no opposition was made to it in passing through the House of Commons ; but when, in virtue of it, the defenders claimed the right to levy the duties specified, they were opposed by the Magistrates and Community of Dumbarton, who claimed an exemption, which they supported by a declarator of their right. Their claim was founded upon a contract in the year 1700, between the two burghs, for settling their differences as to the navigation of the Clyde ; by which it was provided, That in all time hereafter the vessels belonging to Glasgow, Port-Glasgow, &c. going to the harbour of Dumbarton, should have exemption from the payment of any duty to the said burgh. “ And in like manner, that the hail vessels and boats belonging to the burghesses, inhabitants of the burgh of Dumbarton, are exempted from, and noways liable in payment of any duty whatsoever at the said burgh of Glasgow, Broomielaw, Port-Glasgow, or any other port or harbour belonging to them ; so that both burghs are hereby declared free at each other’s ports in all time hereafter.”

The question having been reported upon informations,

The pursuers pleaded :

The contract in 1700, and the right thereby acquired from the town of Dumbarton, was the town of Glasgow’s only title to their former duties, and consequently the only ground upon which the town of Glasgow could apply for or obtain the duties granted by the present act, as in lieu of the former settled by the transaction with the town of Dumbarton, under the reservation specified. This being the case, it would be highly unjust if the town of Glasgow was to profit thereby at the expense of the town of Dumbarton, or be entitled to exact duties

No. 7. which, had matters remained upon their former footing, never could have been demanded.

As the Legislature unquestionably meant to extend equal justice to all the subjects of the kingdom, it never could be presumed to have intended so strong a measure so prejudicial to the interest of one burgh in favour of the other, and in violation of so fair a contract of such old standing, and which had been the uninterrupted rule of possession for 70 years.

It was impossible to suppose that such an act would have been obtained, fraught with injustice, had the Legislature been apprised how matters stood betwixt the two burghs upon the footing of the contract ; so that the concealment of these circumstances amounted to a fraud upon the part of the town of Glasgow, which precluded that Community from founding upon the statute that had been so improperly obtained.

This act had been applied for and obtained without the pursuers' privity or knowledge ; and however much the subject may be presumed to be in the knowledge of an act of Parliament, when passed into a law, the reverse took place with regard to a depending bill ; which none of the lieges, except those who were made parties, were presumed to know any thing of. And even supposing the pursuers to have been in the knowledge of the application for this change of the duties, it was not incumbent upon them to have stated themselves as parties in opposition to the act, having reason to consider the contract 1700 as a sufficient security and protection of their privileges.

The defenders pleaded:

The pursuers were now too late, and came to a very improper place to set up the right of exemption claimed. Whenever the enactments of a statute were general and explicit, it was not in the power of courts of law to introduce arbitrary exceptions by implication or artificial reasoning. It was the business of the legislature itself to introduce such exceptions as were thought to be just and reasonable ; and if parties neglected to put in their claims where they could alone be heard, they had themselves to blame ; but no inferior authority could supply the defect. The statute in question afforded an example, where the Legislature had interposed in favour of particular rights, *viz.* as to the ferry-boats at several different places upon the river ; which furnished an additional argument against the pursuers' demand, and shewed, that in passing the statute the rights of others who had just pretensions had not been neglected.

The complaint of injustice, and argument reared upon the onerosity of the contract, were without foundation. The duty was not imposed to enrich the city of Glasgow, but to defray the expense of improving the old, and making new quays, to render the navigation, shipping, and landing of goods, more easy ; and as the pursuers would enjoy that benefit in common with the rest of the lieges, it was but equitable that they should contribute in proportion to the expense. The validity and onerosity of the contract did not influence the present question : It related entirely to duties of anchorage, and others then pressable at the Broomie-

law, and the other ports and harbours belonging to the town of Glasgow; but it never could be pleaded upon as a discharge of or exemption from these new duties recently laid on by Parliament, long after the contract, and for reasons and purposes which did not, at the date of that agreement, exist.

The Lords framed their judgment upon the general point; and as the act was a public statute, and the words clear and general, without making any exception, a very considerable majority was of opinion that no relief could be given. Though they could explain an act of the Legislature, they had no power to supply or correct it; and could even give it no other interpretation than the precise terms used naturally and positively authorised. It was also observed, That as there appeared to be a hardship in this case, the town of Dumbarton was entitled to bring an action of damages against the town of Glasgow upon the warrandice in the contract, so far at least as regarded the old duties

The judgment was, "In respect the words of the act of Parliament are general, imposing the duty in question on all ships or vessels coming to the Broomielaw or harbour of Glasgow, find they can give no relief to the town of Dumbarton in this action; and therefore dismiss the process of declarator at their instance."

In consequence of the suggestion from the Bench, the town of Dumbarton brought a process of relief upon the warrandice in the contract 1700; and in a reclaiming petition, craved that it might be reported and conjoined with the declarator of exemption. Upon advising the petition and answers, it was conjoined with the preceding process. The town of Dumbarton was afterwards found entitled to the benefit of the contract; and a remit made to the Lord Ordinary to ascertain the proportion of dues they were to pay.

Lord Ordinary, *Auchinleck*.
Clerk, *Campbell*.

For the Town of Dumbarton, *A. Lockhart*.
For the Town of Glasgow, *Adv. Montgomery, Sol. H. Dundas, et alii*.

Fac. Coll. No. 106. p. 320.

1772. November 21.

WILLIAM ANDERSON, Factor upon the Personal Estate of David Wardrobe, Merchant in Edinburgh, *against* DAVID WARDROBE, Surgeon in Edinburgh.

By this act, passed during the session of Parliament 1772, it is enacted, "That no arrestment of a debtor's personal estate, or any part of it, used at any time within 30 days before an application for a sequestration of such personal estate, under the authority of this act, shall give any preference to the arresting creditor, in the event of a sequestration taking place."

By the last clause of the act it is enacted, "That the present act shall continue and be in force for seven years from the said 15th day of May, 1772, and to the end of the then next session of Parliament, and no longer."