

On the 8th August 1775, "the Lords found the Duke of Gordon not entitled to a cruive, and decerned it to be removed, and found it not necessary to determine as to the right of navigation in the river."

*Act.* H. Dundas, &c. *Alt.* D. Rae, &c.

N.B. I imagine that the pursuers, in general, did not exult much in this victory, for they are left at the mercy of the Earl of Fife, who may convey his right to a currach-fishing to the Duke of Gordon for a valuable consideration; and so leave the superior heritors without any weapons of defence against the Duke's cruive-fishing.

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1775. August 9. ALEXANDER STEWART *against* JOHN ISAT.

COMMUNITY—BURGH-ROYAL.

Magistrates of a borough having power, by special grant, to levy a duty on beer and ale, may not charge it unequally on the persons liable in such duty, under the pretence that though an ease be given to some as to the duty in question, yet a general parity is preserved in respect of their subjecting themselves to another tax, *viz.*, the payment of a certain dry multure to the town.

[*Faculty Collection*, VII. 98; *Dictionary*, 1993.]

JUSTICE-CLERK. *Prima facie* it would require some very cogent reason to prevent levying a duty below what the law authorises. If the magistrates have acted arbitrarily they may be corrected; but they have acted according to the best rules of Police, in order to establish an equality. They cannot give up the multures, their ancient patrimony, unless by levying the impost duty unequally. They cannot make an equality between those liable to multures and those not liable.

COVINGTON. If this impost duty is now part of the common good, the Magistrates may levy it just as they please. Upon this ground the judgment in the case of the *Toll at Bothwell Bridge* proceeded.

ALEMORE. Before the Act of Parliament, some of the people paid multures; others not. Did not they who were exempted from multures enjoy a natural advantage? Here a weapon is put into the hands of the magistrates for the good of the community; if they take off any part of the duty, they must do it equally. I think that the manner of levying on Isat is against law. I do not see where this can stop. As to the Toll at Bothwell Bridge, the practice was fixed by long possession; besides, an equal rule was observed; some inhabitants were not burdened, while others were relieved.

KAIMES. What is done here is intended for introducing the most perfect equality.

COALSTON. Two important questions occur here,—*1st*, Whether magistrates have an arbitrary power? *2dly*, Of levying unequally in order to make an equality? On the whole, the first question is of infinite moment, and of very great

extent. If the magistrates have an arbitrary power of levying, they have the power of ruining any individual. The magistrates are the trustees for the community, and for every individual inhabitant. If they lay on a tax arbitrarily and partially, they counteract their great trust. The *second* question may have more difficulty. As to it there is a specious pretence, but it is no more than *specious*. Before the Act of Parliament, the Brewers of Gorbals were not liable in multures and had a natural advantage. How can the magistrates deprive them of this natural advantage.

COVINGTON. If the Court is satisfied that the magistrates have done any thing arbitrarily, it may interpose and correct their doings. The question is not as to the magistrates levying more from this man than he is bound to pay, but as to their relieving others. Have they done this in a right way? They ought to have made an equality by giving down the multures; besides, the difference on the duty is more than the multure.

PRESIDENT. I do not say how far the magistrates can relieve by giving down the multure. My difficulty is how far they can dispense with the equality established by the statute. The principle maintained by the magistrates may lead to dangerous consequences and great oppression. I never saw an Act of Parliament of this kind with an arbitrary power. The magistrates are under the review of trustees, by a special provision in the statute. In stenting trade for proportioning the land-tax, &c., there is a necessary inequality on account of the larger or smaller proportion of each man's trade; but the magistrates cannot, from arbitrary reasons, make a difference where the amount of trade is equal.

GARDENSTON. The magistrates seek to make an unequal exaction. It resembles a familiar case, which I will put. The members of the College of Justice are exempted from certain stents, to which other inhabitants in Edinburgh are subject. Could the magistrates, in order to make an equality, grant a dispensation to the other inhabitants, as to payment of taxes, in which they, in common with the members of the College of Justice are liable, and yet exact such taxes from the members of the College of Justice alone?

On the 9th August 1775, "The Lords found that the Magistrates of Glasgow, in the execution of the Act of Parliament, can only charge the duty in question equally upon the inhabitants liable in such duty, and remitted to the Lord Ordinary to proceed accordingly;" adhering to their own interlocutor of 13th July 1775; and altering Lord Kennet's interlocutor.

*Act.* W. Craig. *Alt.* J. M'Laurin.

*Diss.* Justice-Clerk, Kaimes, Kennet, Monboddo, Alva. *Non liquet*, Covington.