

originally parts of the regality of Broughton; and, as neither the magistrates nor council, nor the deacons of the incorporations of Edinburgh, do take part with, or give countenance to the defence that is now maintained on behalf of the present defenders, however well disposed, upon all other occasions, to extend their authority and privileges over the Canongate, it cannot but appear strange that these defenders, as so many individuals, should be so hardy as to maintain this litigation in their own name.

The result of the aforesaid mutual processes was a judgment, 8th February 1694, declaring the privileges libelled conform to their gifts and seal of cause, in favour of the incorporations of the Canongate, and liberties thereof; and declaring the immunity libelled in favour of the inhabitants of the regality of Broughton, and the country included therein, and that they are free of any servitude to the trades of the burgh of the Canongate.

It were improper, on this occasion, to enter on the question, whether the immunity ascertained by these decrees were just or unjust? but, as the matter therein disputed was, whether the exclusive privileges granted to the incorporations of the Canongate did extend over the lands of those heritors, which, by a contract in 1637, and charter and infestment thereon, had been separated from the regality of the Canongate, and erected into a separate regality in favour of Herriot's Hospital; and, as this clearly imported an acknowledgment that the incorporations of the Canongate did retain their exclusive privileges within the burgh of Canongate, and its liberties, it is truly incomprehensible what argument can from thence arise, to infer that the freemen of the incorporations of Edinburgh are entitled to exercise their callings within the liberty of the Canongate.

Observed on the Bench: This is a question alone between two incorporations; and the incorporation of Canongate has just as good a right as that of Edinburgh.

'THE LORDS adhered.'

Act. *A. Lockhart.*

Alt. *Crosbie.*

Clerk, *Campbell.*

Fol. Dic. v. 3. p. 108. Fac. Col. No 37. p. 96.

1775. *January 18.*

ALEXANDER OLYPHANT and Company, Wine-Merchants in Ayr, *against* The
MAGISTRATES and TOWN COUNCIL of AYR.

THIS being a question relative to the Town of Ayr's right to exact certain duties upon wine passing out of the harbour of Ayr northwards, under the denomination of *bridge custom*, which was challenged by an action of declarator at the instance of Alexander Olyphant and Company, the Magistrates, in defence, stated their several charters from the Crown, from William the Lion,

No 87.
Immemorial practice in a burgh, of levying particular duties, having a preceding title in writing to tolls and customs in general, found to be a sufficient ground for supporting the exaction.

No 87. David II. Robert III. James VI. Charles I. ratified in Parliament, containing *liberas consuetudines, cum firmis burgi, parvis custumis, tolloneis, annuis reeditibus, libero portu, custumis, aliis juribus, privilegiis, pertinentiis*—free ports or harbours, customs, annualrents, free fairs, market days, liberties, privileges; and produced a table containing the rates of that part of their customs which was the subject of the present question. They observed, that the table was distinguished into two heads, of *bridge custom* and *causeway custom*; the former being the duty exacted upon goods carried northwards, the latter the duty levied upon goods carried southwards; and they offered to prove, that, in virtue of their charters, they had been in the immemorial possession of the duties stated in the table of customs, as now explained; which, even independently of any title in writing, they contended, would support their right to the customs in question.

The LORD ORDINARY pronounced the following interlocutor: ' Finds the defence pleaded for the Magistrates of Ayr, defenders, viz. That, for time past memory, they have been in possession of levying the tolls and customs now challenged upon goods carried by sea from the harbour of Ayr northwards, or southwards; the first under the appellation of *bridge custom*, the other under the appellation of *causeway custom*, as distinguished in their table of the town's customs, dated the 3d November 1730, relevant; and ordains the pursuers to say, Whether they mean to dispute the possession, as above qualified, or to offer proofs of interruption sufficient to bar the effects of such possessions?' To this judgment the Court adhered; and afterwards, on advising the proof adduced, gave final judgment, as follows:

' THE LORDS find, That the defenders have right to exact the tolls and customs now challenged.'

Act, Crosbie.

Alt. G. Ferguson, Macquoen.

Clerk, Tait.

Fac. Col. No 149. p. 8.

1775. March 10.

CHARLES EARL of ABOYNE, JOHN EARL of HYNDFORD, JOHN LORD COLWILL, and Others, *against* The MAGISTRATES and TOWN-COUNCIL of Edinburgh.

No 88.

Immemorial possession and practice, where there is any dubiety upon the words of a grant, as not being sufficiently comprehensive, become the rule for exacting, as

THE pursuers insisted in an action of declarator relative to the extent and mode of levying those duties possessed by the town of Edinburgh, commonly called their impost-duties.

The Magistrates and Council of Edinburgh got what is called the impost-duty, by a grant from Charles the second in 1671, which was ratified in Parliament by an act dated the 11th of September 1672.

The grant proceeds on the narrative, '*adeo ut nisi prorogatio impositionis super vino aliisque exteris commoditatibus importandis concedatur omni tempore futuro, &c.*' and, therefore, gives to and incorporates with the town of Edinburgh: