

No. 4.
2d. cap. 11.
of a wrong
committed at
the election
of Magi-
strates and
Councillors
of a burgh
be entitled
to his costs
of suit under
the statute,
the wrong
being redres-
sed before
judgment
comes to be
given by the
Court?

September 1776, but that the Magistrates and Town Council of that burgh had notwithstanding refused to admit him into the Council.

The ground of refusal was, that Dove had not brought sufficient evidence that James Inglis, (one of those who had voted against his election) was a minor; the only proof at first produced of this being a certificate from the Session Clerk; and that if Inglis was not proved to be a minor, Dove's election could not stand, as the casting vote was given against him at the election.

To remedy this defect of evidence, Dove produced an extract with regard to the minority of Inglis, signed by a Minister and two elders. The Council still seemed to think this insufficient, and appointed additional proof to be adduced. Dove consequently brought his complaint, but before judgment was given, the Council admitted him to take his place among them as deacon of the taylors. It came thus to be a question whether the complainer was entitled to his costs of suit, according to the act 16th Geo. II. The Court seemed to be of opinion that the Council had some reason to consider the certificate of the Session Clerk as not sufficient evidence of the minority of Inglis, and that the proof of his minority was entirely incumbent upon the complainer; therefore the Council, soon after the stronger evidence had been produced, viz. the extract signed by the minister and elders, had admitted Dove to his place of deacon. The Court were also of opinion that the statute did not apply to this particular case; and the following interlocutor, 14th June 1777, was accordingly pronounced: In respect that the complainer is now admitted deacon, and has taken his seat accordingly, Find that there is no occasion to judge on the merits of said competition, and therefore find that no expenses can be claimed under the act of Parliament, and decern.

Act. Blair.

Alt. Hay Campbell.

J. W.

1798. *November 21.*

ALEXANDER MUIR against WILLIAM KAY and Others.

No. 5.
The duty of
two pennies
on the pint of
malt liquor
granted to
the town of
Borrow-
stounness,
does not ex-
tend to porter
imported in-
to the town
and harbour,
and after-
ward sold in
wholesale to
strangers.

THE town of Borrowstounness obtained, in 1774, an act of Parliament for levying a duty of two pennies Scots on the pint of ale and beer, for the purpose of repairing the harbour. The duty has been continued by two subsequent statutes, in 1767 and 1794; and by the former it is extended to the parish, as well as the town of Borrowstounness.

The terms in which the duty is imposed by these statutes are, "That there shall be laid an imposition or duty of two pennies Scots upon every Scotch pint of ale and beer that shall be either brewed, brought in, tapped, or sold, within the said town of Borrowstounness, or the liberties thereof, and that the said imposition or duty shall be paid, or made payable, by the brewers for sale, or venders or sellers of all such ale and beer."

The statutes further provide, "That if at any time during the continuance of this act, any ale or beer shall be brought in, vended, or sold within the said town of Borrowstounness, and privileges thereof, having not first paid the duty hereby laid and made payable as aforesaid, the same, with the cask, shall be confiscated for the use of the said harbour."

The uniform practice under these statutes, has been, to exact the duty on all ale brewed within the town and parish, and sold, whether to the inhabitants or strangers. But, with regard to ale and porter imported into the town and parish, the duty, till 1794, had been levied only on what was afterward sold for the consumption of the inhabitants, or by retailers, in small quantities, to the neighbouring districts.

In 1794, Alexander Muir, who farmed the duty on ale imported, made a claim against William Kay, and certain other shipmasters and shipowners in Borrowstounness, for the duty on all the porter imported by them into the town, parish or harbour, (which last lies within the parish) whether the same was afterward sold in wholesale or retail, or to purchasers residing within or without the territory.

The trustees appointed by the statute for the management of the duty, sustained Muir's claim; and their sentence was afterward affirmed by the Quarter-Sessions, to whom a power of reviewing the proceedings of the trustees is granted.

The defenders complained of these judgments by advocation; and

Pleaded: Although the words of the statute may seem at first sight to favour the claim of the pursuer, it is clear, that their meaning was, to give the duty only on ale consumed or sold by retail within the town or parish. The practice also since the commencement of the tax, shews, that it must have been the intention of the Legislature, and of those who originally applied for it, that it should not affect malt liquor imported into the territory, if it be afterward sold in wholesale to strangers. Indeed, it would materially injure the trade of the town to extend it to porter sold without the territory, as it would enable shipmasters from other quarters, not subject to the duty, to undersell those of Borrowstounness.

Answered: The words of the statute clearly support the pursuer's claim. This is put beyond doubt, by the clause which makes the cask seizable if the duty be not paid immediately on importation. And indeed as all malt liquor brewed within the town pays the duty, although afterward sold beyond the district, there seems to be no good reason, why that which is imported should be more favoured. The erroneous practice hitherto arose partly from its having been for some time doubted, whether porter sold even within the territory was liable to the duty, and partly from a majority of the trustees appointed by the original statute in 1744 having been shipmasters, whose interest it was to make the duty on that article as light as possible.

No. 5. The Lord Ordinary took the case to report on informations. Some of the Judges, moved by the words of the statute, were for repelling the reasons of advocation; but a great majority, on the grounds stated for the defenders, thought their plea well-founded.

The Court “found, That porter, or other beer or ale imported by ship-masters and others into the port or harbour of Borrowtounness, and re-exported without being landed, or breaking bulk, or landed and put into cellars or warehouses, within the limits of the town and liberties of Borrowstounness, but afterward sold in wholesale and not by retail, to persons residing without the district, and not for consumption within it, are not liable in payment of the duty of two pennies on the pint, under the acts of Parliament libelled on; and therefore advocated the cause, and assoilzied the defenders.”

A reclaiming petition for the defenders, praying for an explanation of the judgment, in so far as to have it found, that the duty was not chargeable, in the first instance, on the importers, but on the retailers, was refused, (13th December 1798), without answers.

Lord Ordinary, *Meadowbank,*

For Muir, *W. Stewart.*
Clerk, *Sinclair.*

Alt. *John Clerk, Turnbull.*

R. D.

Fac. Coll. No. 92. p. 211.

1799 December 18.

THE MAGISTRATES OF EDINBURGH, &c. *against* THE CORPORATION OF FLESHERS, and Others.

No. 6.

The cattle meant for consumption in the city of Edinburgh, were formerly purchased by the butchers, chiefly at a market belonging to the city, at some miles from it, where a small duty was exacted by the Magistrates. This market having been deserted, and it having become the general prac-

THE cattle meant for consumption of the city of Edinburgh were for a long time chiefly purchased by the butchers, at a market held by the Magistrates of Edinburgh, at the House of Muir, about eight miles from town, where they exacted 1s. Scots on each ox or cow; 1s. Scots for each calf; 8d. Scots for each sow, and 2d. Scots for each sheep. This custom was paid by the seller, if the purchaser was a freeman butcher of Edinburgh, but in other cases by the purchaser.

The sheep used in the city were chiefly purchased by the butchers at a live market held at the sheep-flakes in the Grassmarket of Edinburgh, where a similar duty was exacted.

Calves and swine were always purchased privately by the butchers, and brought to the flesh-market, after being slaughtered, and the duty there exacted on each carcase.

The right of holding the market at the house of Muir, was acquired from Lord Abernethy of Salton, in 1612, in exchange for some superiorities belonging to the city.