

CASES

DECIDED IN

THE HOUSE OF LORDS,

UPON APPEAL FROM

THE COURTS OF SCOTLAND.

(Writ of Error from the Court of Exchequer in Scotland.)

JOHN GRIER, in Priestside, GEORGE
JOHNSTON, in Cockpool, and JOHN } *Plaintiffs in Error.*
PORTEOUS, Miller, at Comlongon Mill, }

JOHN MITCHELL, Officer of Excise, *Defendant in Error.*

House of Lords, 27th April 1814.

DUTY ON SALT—EXEMPTION—STATUTE 1661.—The plaintiffs in error had been in the practice of making salt of a coarse description by extracting it, by a certain process, from sand impregnated with salt; and they stated that, by the Act 1661, there was an exemption from duty given to the people of Annandale, within which they lived, in regard to salt so made. In the Court of Exchequer the jury gave a special verdict, merely finding the facts, leaving the point of law to the Court. The Barons delivered judgment in favour of the defendant in error. On a writ of error this was reversed, and the Barons were ordered to issue a new writ of *venire facias* to try the issue between the parties *de novo*.

THE plaintiffs in error had been in the habit of manufacturing and selling a certain species of coarse salt; which, they contended, they were entitled to do free of any charge of duty, in virtue of the Act of Parliament passed in 1661, which gave a right to make salt within the bounds of Annandale, of a certain kind, free from “any payments of excise.”

The information against them set forth, That John Mitchell, Excise Officer, had, within the county of Edinburgh, seized and to the use of His Majesty and himself, as forfeited, ar-

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rested a large quantity of salt, to wit, seventy bushels of salt which had been removed from a certain salt-work in the district of Annandale, without a true and lawful permit.

The plea put in to this information by the defendants in defence was, That the salt, parcel, and so forth, was not, within the time aforesaid, removed from the salt-work without a true and lawful permit, *contrary to the statute*.

A special jury having been empannelled and sworn on the 24th of January 1809, they returned the following verdict:—

“ The jurors say, upon their oaths, That the plaintiff was
 “ an officer of excise during the period charged in the infor-
 “ mation, and that within the said period he seized, to the
 “ use of His said Majesty and himself, as forfeited, the salt
 “ mentioned in the information: That the said salt, at the
 “ time of the seizure thereof, was found removing from a
 “ certain salt-work in Scotland, and within the bounds of the
 “ district of Annandale, without being accompanied with any
 “ permit: That the salt was manufactured, or made, at
 “ Priestside and Cockpool, in the parish of Ruthwell, in the
 “ district of Annandale, by the defendants, by a method long
 “ practised in that country; to wit, by gathering large quan-
 “ tities of sea-sand, incrusted and impregnated with salt, into
 “ pits or holes, and extracting from the said sand, by pouring
 “ water thereon, a liquor or brine, which, being afterwards
 “ boiled in vessels or pans made for that purpose, salt is ob-
 “ tained from the same of a quality considerably coarser than
 “ what is commonly made at the salt works in Scotland; and
 “ that when sold it sells for the price of about five shillings a
 “ bushel weighing fifty-six pounds: That the said parcel of
 “ salt, in the said information mentioned, being made in the
 “ manner above-mentioned, was never charged with or paid
 “ any duty to His Majesty: That in no part of Scotland is
 “ salt made or manufactured by the same process with that
 “ used in manufacturing the salt under seizure: That the
 “ said salt under seizure is of such inferior quality, as salt
 “ usually made in that manner and of such value, to wit, of
 “ the value of five shillings or thereabouts, the bushel: That
 “ when seized it was removing, without permit as aforesaid,
 “ from the parish of Ruthwell, in the bounds of Annandale,
 “ where it was made, to a certain other place within the
 “ bounds of Annandale, in order to be there sold and disposed
 “ of: That upon the 12th day of July 1661, an act was
 “ passed in the Parliament of Scotland, of the tenor follow-
 “ ing: ‘ At Edinburgh, the 12th day of July 1661 years, the

“ Estates of Parliament having heard a supplication pre-
 “ sented unto them by Adam Newall, in behalf of some poor
 “ people and tenants in Annandale, who, by their industry or
 “ toilsome labour, do from sand draw salt, for the use of some
 “ private families in that bounds, and who, in regard of the
 “ painfulness and singularity of the work, have ever been free
 “ of any public imposition or exaction, until the year 1656
 “ or thereby; that the late Usurper, contrair to all reason,
 “ equity, or former practice, forced from them an exaction, to
 “ their overthrow and ruin, and thereby so depauperated them
 “ that they are in a starving condition, and humbly desiring
 “ that they may be freed from that unwarrantable exaction; as
 “ also having heard and considered the Report from the Com-
 “ missioners for Trade and Bills, with their opinion thereanent,
 “ the King’s Majesty, with advice and consent of the Estates
 “ of Parliament, declares the said salters winning and making
 “ salt within the bounds above specified, in manner above-
 “ mentioned, to be free of any payment of excise therefor,
 “ and discharges all collectors or others, from any uplifting or
 “ exacting of the same in time coming. Extracted furth of
 “ the Records of Parliament, by me, Sir Archibald Primrose
 “ of Chester, Knight and Baronet, clerk of His Majesty’s
 “ Council, Register, and Rolls. Sic subscribitur, A. Prim-
 “ rose.’ That from the time of passing of this Act, till about
 “ the year 1781, the quantity of salt so made was never of
 “ any considerable amount, but that, since that time, in
 “ favourable seasons, salt had been there made to the amount
 “ of from fifty to sixty tons annually; and if, upon the whole
 “ matter aforesaid, the Court shall be of opinion that the
 “ defendants are not legally entitled to make or manufacture
 “ salt in the manner above-mentioned, without payment of duty,
 “ then the jury find for the plaintiff; but if the Court shall
 “ be of opinion that the defendants are legally entitled to make
 “ or manufacture salt in the manner above described, without
 “ payment of duty, then the jury find for the defendants.”

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This verdict having been taken into consideration by the Court on the 31st January 1809, and after the Barons had delivered their opinions at large (in which they were not unanimous), judgment was given for the plaintiff (defendant in error.) Whereupon a bill of exceptions was tendered, but refused.

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Against this judgment the plaintiffs in error brought their Writ of Error returnable in Parliament, and humbly hoped that the judgment would be reversed.

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Pleaded for the Plaintiffs in Error.—1. The particular ground upon which this information was founded was, that the salt in question was removed without a permit, as required by 38 Geo. III., c. 89, § 35; but by the special verdict in this case, the whole matter was put upon this ground, Is the salt in question liable to the payment of the duties specified in the Act or not? And it was held, that the regulations as to permits did not attach to the same, unless it was liable in payment of duty. 2. But the Act of Parliament of Scotland in 1661 (recited at length in the special verdict), gives a clear and explicit right to make salt within the bounds of Annandale, of a certain kind, free from “any payments of excise therefor, and discharges all collectors or others from any uplifting or exacting of the same in time coming.” Before the passing of this Act, the salt coats and sand floors of Ruthwell, where this manufacture was carried on, were ancient feudal rights of property granted by the Crown to the Earls of Annandale: these were afterwards transferred to the family of Stormount, and have been continued regularly in their rights and investitures from the Crown ever since. 3. Besides, the 6th article of the Union preserves all private rights and privileges, and it was distinctly shown in evidence, that the salt in question is of the kind which the statute meant to exempt from duty, and that it was made within the bounds pointed out by the Act; and the practice has been publicly carried on from the time of the Union for a period of one hundred years, without challenge.

Pleaded for the Defendant in Error.—1. That the exemption given by the Scotch Act ceased with the annihilation of all duties upon salt in 1671, and did not exist, therefore, at the period of the Union in 1707. 2. That if it could be contended that it only lay dormant, while no duties were collected on salt, and therefore had not ceased before the Union, it was at any rate completely put an end to by the Union, as the Act of the Scotch Parliament regarded only the Scotch Excise. 3. That both duties and exemption ended with the Union, and no exemption can be claimed against subsequent duties which is not recognized by the Articles of Union, or by some clause in an act subsequent to the Union.

After hearing counsel,

It was ordered and adjudged that the judgment given in the said Court of Exchequer in Scotland be, and the same is hereby reversed. And it is further ordered and adjudged, that the said Court of Exchequer in Scotland,

do award a *venire facias de novo*, and proceed according to law, and that the record be remitted to the said Court of Exchequer in Scotland. The tenor of which judgment to be affixed to the transcript of the record, is as follows:—"But because the Court of our said Lord the King in his Parliament aforesaid, is not yet advised what judgment to give of and concerning the premises, a day is therefore given to the parties here until Wednesday the 27th day of April 1814, wheresoever, etc., to hear their judgment thereon, for that the Court of our said Lord the King, in his Parliament aforesaid, is not yet advised thereof, etc. At which day, before the same Court of Parliament aforesaid, at Westminster, came the parties aforesaid, by their attorneys aforesaid; whereupon the Court of Parliament having seen and fully understood all and singular the premises, and having diligently examined and inspected the said record and process aforesaid, and the judgment thereupon, as the several matters recited and contained in the said bill of exceptions, and the causes and matters above assigned of error, by the said John Grier, George Johnston, and John Porteous, it appears unto the said Court that the said judgment of the Barons of the said Court of Exchequer in Scotland is erroneous, and that in giving the aforesaid judgment there is manifest error, Therefore it is considered by the same Court of Parliament aforesaid, that the judgment so given, as aforesaid, be reversed, annulled, and altogether held for nought; and that the said John Grier, George Johnston, and John Porteous, be restored to all things which they have lost by occasion of the judgment aforesaid. And thereupon the said record, and also the process, had, in the said Court of Parliament on the said premises by the said Court of Parliament, are sent back to the Court of our said Lord the King, before the Barons of the said Court of Exchequer in Scotland, to issue a new writ of *venire facias* to try the issue found between the parties, and to proceed thereupon, and do therein, what to law and justice shall appertain."

For Plaintiffs in Error, *Sir Samuel Romilly, Mat. Ross,*
J. A. Murray.

For Defendant in Error, *V. Gibbs, Archd. Colquhoun,*
Wm. Harrison.

NOTE.—Unreported in the Court of Session.

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