

June 25, 1827. ted to refuse it as incompetent, in respect the suspender had not appealed to the quarter sessions.\*

Craigie appealed. Mill made no appearance.

The House of Lords (per the Lord Chief Baron,) ordered and adjudged that the interlocutor complained of be affirmed.

*Appellant's Authorities.*—Cook, May 17, 1823.—(2 Shaw and Dunlop, No. 295.)—Campbell, June 28, 1823.—(2 Shaw and Dunlop, No. 418.)

No. 58. HIS MAJESTY'S ADVOCATE GENERAL FOR SCOTLAND, ex relatione of GEORGE FORESTER and Others, Plaintiff in Error.—*Sir C. Wetherell—Miller.*

EARL OF HOPETOUN and Others, Defendants in Error.—*Shadwell—Adam.*

Et e Contra.

*Statute—Privilege.*—Found (affirming the judgment of the Court of Exchequer,) that the lead and ore raised from the mines of Waterhead, &c., belonging to the Earl of Hopetoun, are only liable in the valorem duties of ten shillings and of L. 1, for every L. 100 exported in terms of the statutes imposing the same, but are exempt from all other duties.

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EXCHEQUER.

THE question in which this writ of error was taken, involved the right of the Earl of Hopetoun, and the lessees of his lead mines of Waterhead, &c., in Scotland, to export the lead thence obtained duty free, in consequence of certain exemptions from duty granted and enjoyed before the union of England and Scotland, and alleged to have been specially preserved by the treaty of Union, and by subsequent Acts of Parliament of the United Kingdom, imposing duties on lead exported.

In order to try the point, ten parcels of lead were tendered at Leith for exportation, without payment of any duty. These were severally seized by an officer of customs as forfeited; for non-payment of the duties imposed by certain statutes, and an information was exhibited in the Court of Exchequer in Scotland, for condemnation. To this information the defenders pleaded the general issue, that the said goods were not shipped

\* See 4 Shaw and Dunlop, No. 296.

or put on board contrary to the form of the said statutes. The June 26, 1827. case came before a jury, and a special verdict followed, in substance finding:—That the lead was produced from ore raised from mines in the lands of Waterhead, or Glengonarhead, in Lanarkshire, and mentioned in the charter and statutes after specified. Charles the First, by charter under the great seal, of date 8th September, 1641, granted to Hope of Waterhead, and his spouse, in liferent, and Thomas Hope, their eldest son, in fee, an heritable right to these mines, bearing express liberty and exemption from custom, on which infeftment followed. This grant was ratified in the Parliament of Scotland in 1644–1661, and for further security both the lands, mines, minerals, and others, and likewise the customs of the lead ore, were dissolved from his Majesty's crown, and from all annexes to the same, and dispensing with the foresaid dissolution, as if it had been made prior to the granting of Hope's right. After this a charter followed, containing an exemption from all customs for the space of three nineteen years. In 1662 a new charter was granted, containing a tack of three nineteen years under the like exemptions. In these charters the fiars, as they successively succeeded, took infeftments. In the meantime, during the usurpation, the Commissioners of Customs having insisted that duties should be paid on the ore or lead, James Hope granted bond for the duties, but on which a charge for payment was suspended by the Commissioners for administration of Justice in Scotland; and after the Restoration, the tacksmen of the customs had credit given them for duties on the Hopetoun lead exported. Thereafter John Hope, the successor of James, was charged for duties, from 1644, and decerned by the Lords of the Treasury to pay the same, but with a recommendation to the King to exoner him of 2-3ds during the time past; and in 1690 and 1692, the Lords of the Treasury and Exchequer discharged the exaction of the duty until further orders; and on a petition, a remit was made by King William to the Lords of the Treasury, who, having remitted to Sir James Stewart, the Lord Advocate, he reported in favour of the exemption, both as to bygones and to come, and a committee of the Lords of Treasury and Exchequer, found that the exemption ought to be maintained, 'for the encouragement of so great and useful a work,' and that this might be done by an act of Exchequer, both as to bygones and in time coming, without the necessity of the formality of a reduction. In 1695, John was succeeded by Charles Hope, who was infeft on a charter containing the exemptions, and the lead and ore

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were excepted out of the tacks of customs and excise in 1697–1705. In 1700, the Lords of the Treasury, on the petition of Charles, declared that the lead and ore were free from payment of duty, and discharged the tacksmen of the duties from exacting it. At the Union, Charles, now Earl of Hopetoun, having claimed to export his lead and ore duty free, an exemption in his favour was entered among the list of exemptions, transmitted by order to the High Treasurer of Great Britain; and from 1707 until 1798, he and his successors enjoyed that exemption, when the duty imposed by 38 Geo. III. was charged. Further duties were afterwards imposed, particularly by 49 Geo. III. c. 98, an ad valorem of 10s. per ton, and particularly a war duty of L.1 per L.100. These duties were paid under protest from 1801, and in 1811, lead being tendered free of duty, was seized. The jurors concluded by finding for the plaintiffs, if the duties demanded were respectively due and payable; but for the defendants, if the duties were not due and payable.

This special verdict was argued in the Court of Exchequer, and on judgment being given, that the defendants were not liable in any of the duties claimed, except the ad valorem duties of 10s., and of the war duty of L.1 for every L.100, the plaintiff brought a writ of error, and the defendants a cross writ of error.

*Plaintiff on original writ.*—The charters and infestments granted to the predecessors of the Earl of Hopetoun, and the ratification thereof in the Parliament of Scotland, were not sufficient to establish the right of exemption from duties claimed in this case. In Scotland, the Crown could not convey away its annexed property, or hereditary revenue, except these were previously dissolved from the Crown, and power given to grant them away by a public act of Parliament; nor could a prior invested grant be confirmed and rendered free from objection by a subsequent ratification in Parliament, with a dissolution joined to the ratification. There has been no *res judicata* in favour of the exemption claimed. By the sixth Article of the treaty of Union, the export duty imposed by the English act of Charles II. c. 4, became payable generally in Scotland, and the exception in that article did not alter the rights of the Hopetoun family, or create an exemption if none previously existed. At all events, the exemption cannot extend to the new duties on lead imposed by the statutes of Great Britain, or of Great Britain and Ireland. The exemptions in favour of private rights

in the statutes, 27 Geo. III. c. 13—43 Geo. III. c. 68—and 49 June 26, 1827. Geo. III. c. 98, extended no farther than already bestowed by the sixth article of the treaty of Union. No lapse of time, or erroneous practice, can validate the exemption. *Quod non est alienabile non est præscriptibile, et nullum tempus occurrit regi.*

*On cross writ.*—The ad valorem duty of 10s., and the L.1, were duties imposed to repay the expenses of the war, from which there can be no exemption by inference.

*Defendants on original and Plaintiffs on cross writ.*—By the grants and acts of Parliament, lead, from the mines in question, is exempted from the payment of customs or other duties, and that exemption is saved by the treaty of Union. It is not to be presumed that the legislature meant to take away that privilege. On the contrary, by a just construction of the statutes since the Union, that exemption is recognised and admitted.

The House of Lords ordered and adjudged that the judgment given in the Court of Exchequer in Scotland be affirmed.\*

J. CHAMBERS—SPOTTISWOODE and ROBERTSON, Solicitors.

The statutes relating to the duties on lead exported are, 12 Car. II. c. 4—19 Geo. III. c. 25—22 Geo. III. c. 66—24 Geo. II. c. 49—27 Geo. III. c. 13—37 Geo. III. c. 15—38 Geo. III. c. 76—41 Geo. III. c. 28—42 Geo. III. c. 43—43 Geo. III. c. 68, 70—49 Geo. III. c. 98.

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\* Of same date was determined the case between his Majesty's Advocate and the Duke of Buccleuch and Queensberry, relative to the lead and ore produced from the mines of Drumlanrig and Sanquhar, the property of the Duke. By an act of dissolution of the 'mines and minerals belonging to James Duke of Queensberry,' (25th March 1707), it is declared that the said 'mines, metal, and minerals are, and shall ' be possessed in all time coming by the said Duke of Queensberry, and his foresaids, ' with express freedom and exemption from all payment of custom, bullion, shore- ' dues, or any other dues whatsoever, payable for any of the said metals or minerals, ' in all time coming, with full power to export and transport the said metals and mi- ' nerals into foreign countries, free from the said dues, and other customs, and dues ' whatsoever, either laid on, or to be laid on.' In November of that year, the Duke claimed of the Commissioners of Customs that lead ore wrought from his mines should be exported, free of duty, which they allowed; and the exemption appears in the list of exemptions transmitted on an order of the Treasury. The lead and ore was thereafter permitted to be exported free of duty until the passing of the statutes, 38 Geo. III. c. 76; 41 Geo. III. c. 28; 42 Geo. III. c. 43; 43 Geo. III. c. 68—70; 49 Geo. III. c. 98. The duties leviable by which, the Duke or his lessees paid under protest.

The question as to liability was argued on a special verdict in Exchequer, and received the same decision both there and in the House of Lords, as was pronounced in the case of the Earl of Hopetoun.