

proof of it. But there was *here* private malice only, and no purpose of promoting the public good. The defender declines giving any account of his reasons for bringing so severe a charge. He does not even say that he ever heard from any one person that letters had been at any time opened at the post-house.

PITFOUR. There was more of private resentment than public spirit in this information. I would not discourage information in a discreet way. I will consider the *act*, not the *intention*. The interlocutor does no more than require a condescence. If he can condescend on nothing, he is without excuse.

GARDENSTON. The case of *James* is not in point: *There* it appears that the commissioners of the revenue had already judged upon the information, and this Court would do nothing which seemed to tend to a review of their judgment.

JUSTICE-CLERK. It is impossible that a charge of this nature could be kept secret. It must have been published by the postmaster-general, else to what purpose was it brought?

MONBODDO. This was not a *libellus famosus*, but an accusation to be supported some way or other. If the defender will do nothing to support it, we must hold it to be calumnious.

On the 19th November 1771, "the Lords found the action competent, and ordains the defender to say whether he means to support his accusation, and by what evidence;" adhering to Lord Ellick's interlocutor.

*Act.* H. Dundas. *Alt.* A. Elphinstone.

1771. November 19. MAGISTRATES OF DUMBARTON *against* MAGISTRATES OF GLASGOW.

#### STATUTE.

Interpretation of, and the effect given to a Public Statute.

[*Faculty Collection*, V. 234; *Dictionary*, 14,769.]

GARDENSTON. This exemption is a private right, established by private contract and long possession. It is not agreeable to the principles of justice and the practice of Parliament, to abolish private rights without an equivalent. We are not to put a construction upon an Act of Parliament which is unjust, when we can put a just one. I do not think that the Act means any injustice: it mentions the new duty in place of the old anchorage, *i. e.* the anchorage as formerly levied, with an exception as to Dumbarton.

HAILES. I would make a distinction. If the whole duty may be levied by

the Act, as much as is equivalent to the duty from which Dumbarton was exempted by the old contract, ought to be repaid.

COALSTON. When public statutes encroach upon private rights, courts of law cannot interpose. The words here are general, imposing the duty upon all ships. I doubt also as to the equity of the exemption claimed. The old exemption was for anchorage at the old quay of Broomielaw ; but this duty is for extending and improving the quay on both sides of the river. The window-tax was imposed by Parliament on the clergy in Scotland from an erroneous view of their condition ; yet this Court could give no relief.

PITFOUR. I cannot put Lord Gardenston's construction on the Act of Parliament. The statute must be our rule. We cannot say that it was enacted by obreption : the Town of Dumbarton might have been heard against the statute, and may still obtain a repeal of it, if they are aggrieved.

KAIMES. This case goes deep into principles of law. If we are to suppose that Acts of Parliament are to be interpreted in strict words, even to the doing injustice to private rights, the supposition would be slavish, and the law despotic. The Act of Parliament did not mean to forfeit Dumbarton of its privileges. To exempt a man on account of his circumstances is one thing ; to forfeit his privileges is another. This distinction answers the objection arising from the case of the window-tax. The ministers in Scotland, in respect of their circumstances, had been exempted from the window-tax, but they had no privilege to be exempted. In the case of *Roystoun*, an Act of Parliament said that debts were true debts. The Court here would not find the contrary. But this judgment was reversed upon Lord Hardwick's opinion. Suppose that the Act could not be otherwise interpreted, still the Magistrates of Glasgow, as representing the community, must indemnify Dumbarton for having obtained an Act derogatory of the contract with Dumbarton. I think that the exemption can only go to the extent of the old duty.

MONBODDO. Here is a hardship upon the Town of Dumbarton : The same reason appears for exemption from the new duty as from the old. My difficulty lies upon our powers. The words of the Act of Parliament are general upon all ships who navigate the Clyde. We cannot introduce an exemption. The Town of Dumbarton ought to have opposed the passing of this law. Perhaps they would not have prevailed in their opposition. It might have been said that the Town of Dumbarton would profit to the extent of the duties. The case of *Roystoun* does not apply ; for that Act was obtained upon false allegations of debts existing, which had been extinguished.

JUSTICE-CLERK. Although I am no slave to Acts of Parliament, yet I will always give my judgment upon plain words, and not put myself in the place of the legislature. The words of the clause are as strong and particular as can be. I think the duty must be levied ; but I do not see how the Magistrates of Glasgow can defend themselves against the warrandice of the contract for repealing the old duty.

AUCHINLECK. Here is an onerous contract between the towns. It is only in consequence of this contract that the town of Glasgow came to have right to levy any tolls on the river. A right to levy tolls is granted by the Act ; but that does not take away the old contract. Suppose that the contract contained

an obligation to pay a sum, in case the duties were levied, would the Act take away that obligation without ever mentioning it? If the town of Glasgow has an immunity at Dumbarton, the town of Dumbarton must have an immunity at Glasgow.

PRESIDENT. This is an ungracious plea on the part of the town of Glasgow; yet I doubt how far this Court can apply the remedy. Over Acts of Parliament we have not the Prætorian power,—*adjuvare, supplere, corrigere*. The words of the Act are express. The case of *Roystoun* is not in point: for there was a private Act of Parliament upon a false narrative. The heir of entail was found to have right to the value of the subject, because the debts of the entailer were fictitious. Yet still the Court could not have stopped the execution of the Act of Parliament, because it proceeded upon a false narrative. A *personal* exception operates not against a *public* law. I doubt whether the town of Dumbarton may not insist that the contract is not binding on the one side more than the other.

BARJARG. Numerous inconveniences would arise were Courts of law to explain away the unequivocal words of an Act of Parliament. The original of this right was founded on a decret-arbitral; so also may its modification be adjusted. This would be a wise measure in both parties.

On the 19th November 1771, “In regard that the Act imposes the duty on all ships, the Lords found that the Court can give no relief in *this* action; and therefore assoilyied.”

Act. A. Lockhart. Alt. H. Dundas.

Reporter, Auchinleck.

1771. November 19. WILLIAM GARDNER and JOHN CAMPBELL *against* ROBERT AGNEW of Sheuchan.

#### DEBTOR AND CREDITOR.

Is a creditor bound, *de jure*, to assign his ground of debt to a co-obligant, who, without having been called upon before the term of payment, and, in particular and unusual circumstances, tendered him payment of his bond; and is such creditor, for having refused to assign, liable in damages to the co-obligant?

[*Faculty Collection*, V. 325; *Dictionary*, 3385.]

GARDENSTON. Upon the principles of the suspenders, a creditor would have action of damages against his debtor who did not pay between terms. It is not clear that there was any obligation to assign. It is plain that the old man Sheuchan was here required to do a thing at once which the judge would not have granted unless *causa cognita*.

MONBODDO. It is, no doubt, the law, that, at any time after the term of