

its ever being conceived to be inconsistent with the rights of the different Incorporations; Coppersmiths of Edinburgh against Aberdour, August 6, 1708, No. 84. p. 1966. No. 10.

The Lords found, That the defenders are entitled “ to import made articles of gold and silver work, and to sell and retail the same in the shops kept by them; but before answer, as to the right of the defenders to employ master tradesmen, or other persons not residing within the burgh, nor entered with the Incorporation of Goldsmiths, to manufacture or make for them articles of gold and silver work, and to inbring and sell the same in their shops within the city, remit the cause back to the Lord Ordinary, to hear parties farther thereon, and on any other points betwixt the parties, and to determine the same as to his Lordship shall seem just ”

And a reclaiming petition against this interlocutor was refused without answers.

Lord Ordinary, *Cullen*.  
Alt *Robertson*.

Act. Lord Advocate *Hope, Reddie*.  
Agent, *Ja. Gibson, W. S.*

Agent, *W. Walker, W. S.*  
Clerk, *Menzies*.

*J.*

*Fac. Coll. No. 29. p. 59.*

1802. *June 15.*

The INCORPORATION of FLESHERS of Glasgow, *against* The MAGISTRATES.

IN the year 1744, the Magistrates and Town-Council of Glasgow erected a slaughter-house, adjoining to the city, for the accommodation of the butchers; and by an act of council, it was appointed, that those of them who made use of that place should pay a certain rate, in proportion to the numbers of cattle that might be slaughtered. And in the year 1755, a set of public markets were erected for the accommodation of the inhabitants, in which places were appropriated for the sale of the different articles of provisions. The Magistrates, by an act of council, (8th Dec. 1755), made certain regulations with respect to the rents and duties to be paid for these slaughter-houses and markets by the town butchers who were to use them both; and by the country butchers who might expose their vivres in the market. These duties were levied upon each head of black cattle, and each dozen of small cattle that might be exposed to sale; and this regulation was intimated to the butchers. The rents and duties then fixed were acquiesced in, and have been regularly levied ever since by the Magistrates.

Matters continued in this situation till the year 1799, when the Magistrates, by an act of council, (16th May), raised the dues of the beef and the mutton markets one-third more than the former rate, reserving to themselves to augment this rate, after the expiry of a year, if they should conceive it expedient. The Incorporation of Fleshers presented a bill of suspension, on being charged

No. 11.  
Stall-rents, or dues for accommodation in the market-place, having been fixed by an agreement, cannot be raised at the pleasure of the magistrates.

No. 11. with these additional rates; and the Lord Ordinary reported the cause. The Magistrates

Pleaded: *1st*, The privileges conferred upon royal burghs in Scotland, entitle them to impose small duties upon the different commodities sold in the market, and the rights of the burghs were acknowledged and reserved in the articles of the Union; Art. 21. Duncan against the Magistrates of Aberdeen, 21st July 1786, No. 110. p. 2003; Fergusson and others against the Magistrates of Glasgow, 29th June 1786, No. 103. p. 1990. The Magistrates and Town-Council of Glasgow possess various charters from the Sovereign to this effect, duly ratified by different acts of Parliament; Act Parl. 26th June 1633; 17th November 1641; 4th January 1690. They are therefore entitled to alter the rates of duties from time to time, under the control of the Supreme Court.

*2d*, The alteration in the present case is reasonable; for owing to the diminution of the value of money, the increased rate is not really higher than the original rate as fixed in the year 1755.

*3d*, The duty levied on the commodities exposed to sale, is to be considered as a rent for the market-place, of which the Magistrates are proprietors. Like other landlords, they are entitled to raise this rent; and the increase which they have made, is by no means disproportionate to the increase which has taken place in the rent of the adjacent tenements.

Answered: The Magistrates of a royal burgh have no right to impose a tax upon the inhabitants, without the consent of the Legislature. They have as little right to increase any duties that have been previously imposed; and as the Sovereign himself has no power of levying such taxes, any reservation of such a right in the articles of the Union is altogether ineffectual; Boog and Thomson against the Magistrates of Burntisland, 22d February 1775, No. 103. p. 1991; Tod against the Magistrates of St. Andrew's, 15th June 1781, No. 106. p. 1997.

*2d*, If the Magistrates have no right to impose the duty, considerations of expediency can never confer the power; but in fact these duties have risen since the year 1755, from the increased population of the city, in proportion with the other revenues of the burgh.

*3d*, The agreement in the year 1755, which has been acted upon ever since, was considered as a final arrangement between the Town-Council and the Butchers, by which the Incorporation had a right to use these markets in all time coming, upon payment of the rents and duties which were then imposed.

The Lords (5th February 1802) suspended the letters *simpliciter*, and upon advising a reclaiming petition, with answers, they adhered to this interlocutor.

A considerable majority of the Court seemed to hold, that the transaction in 1775 was a final arrangement, which could not be altered without the consent of parties.

Lord Ordinary, Cullen:

Agent, F. Fotheringham, W. S.

Agent, A. Millar, W. S.

J.

For the Magistrates, Campbell, Connell.

Alt. Erskine, Fletcher.

Clerk, Sinclair.

Fac. Coll. No. 65. p. 90.