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inspection of the books of that office. Even if he was the undoubted proprietor of the newspaper in question, he is not entitled to refuse inspection of such parts of these books as are material to the decision of the present cause, depending between third parties, so that whether the appellant be the proprietor of the Scots Chronicle or not, the respondent is, by the law and practice of Scotland, entitled to such an inspection as the interlocutor of the Court of Session allows.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be affirmed, with £100 costs.

For Appellant, *T. Erskine, W. Adam.*

For Respondent, *R. Dundas, W. Grant.*

(Writ in Error)

From Exchequer in Scotland.

ROBERT DUNDAS, Esq. His Majesty's Advocate General,	} <i>Plaintiff in Error;</i>
WILLIAM MENZIES, Spirit Dealer, Glasgow,	

House of Lords, 7th June 1799.

DISTILLERY LAWS—LICENSE.—A distiller having a distiller's license for the manufacture of spirits, which expired on 10th Oct. 1797, gave notice to the crown on 10th June 1797 that he had ceased to be a distiller, and had disposed of the same to a third party, he at sametime having 11,500 gallons of spirits on hand; the question was, whether he could sell these under his distillery license, which was then current and not expired, or was bound to take out a new license as for a wholesale dealer, he having ceased *de facto* to be a distiller? The Court of Exchequer, on a special verdict of a jury argued before them, found for the defendant in error; but reversed in the House of Lords, and held, that the moment he renounced the character of distiller, he was bound to take out a license as a dealer or seller of spirits.

The defendant commenced the business of a distiller, and, in terms of the statute, granted bond to the crown, with one sufficient surety, for the regular payment of the duty on two stills to be licensed to him for distilling spirits at

Gorbals of Glasgow, for one year, from the 10th day of October 1796 to the 10th day of October 1797. The license as a distiller was taken out for this period also.

The defendant made due and regular payment of the license duty in advance, up to 10th June 1797, when, having resolved to give up the concern, and transfer the distillery, he gave notice, of that date, to the crown, that he had sold and disposed of the same accordingly to a Mr. Moffat.

At the time he so disposed of the distillery, he had 11,500 gallons of spirits on hand, the whole duties for the stills, in which these spirits were made having been paid. And the question was, Whether he could dispose of them under his own certificate, without taking out a license as a wholesale dealer, the acts enjoining that all such, "Not being a re-tailer, nor a rectifier, nor a distiller, shall" take out license.

The defendant maintained, that being a distiller, and his license as such paid up to 10th October 1797, he was not to be viewed as a wholesale dealer, but entitled to dispose of his spirits under his distillery license until that license expired; and consequently all the spirits disposed of by him between 10th June and 7th October 1797, when that license expired, must be viewed as under the exception of the acts.

The Court of Exchequer, on a special verdict, argued before them, found for the defendant.

Dec. 9, 1798.

Against this judgment the present writ of error was brought to the House of Lords.

Pleaded for the Plaintiff in Error.—The defendant in error having, by his own voluntary act, renounced and given up the character of a distiller, and ceased to pay duty as such, from and after 10th June 1797, he was not entitled any longer thereafter to enjoy the privileges legally attached to that character. His character of licensed distiller ceased *de facto* after the 10th June 1797, and was most completely extinguished *de jure* after the 10th of October 1797, when the defendant's license, even upon the supposition of his having gone on distilling and paying duty up to that period, was wholly at an end, and his character as a licensed distiller, did entirely cease and determine. Further, because the defendant in error, either *de facto*, after the 10th of June, or *de jure* after the 10th of October 1797, did cease to be a licensed maker or distiller of spirits, and, consequently, then fell under the description of a *dealer* in

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spirits, by having in his possession above 63 gallons of spirits, which, by the act 6 Geo. I. c. 21, § 18, subjected him to the survey of the officers of excise; and as such dealer by wholesale he was required by the statute 33 Geo. III. c. 69, § 9, to take out a license, and to pay for the same the sum of £3; his refusal to do which has occasioned the present prosecution.

The privilege granted to a licensed distiller of sending out spirits made by him from the place of their manufactory with his own certificate, instead of the excise permit, is in like manner confined to the person holding such certificate, and to the time during which he possesses it; for the 22d section of the 28th Geo. III. c. 46, requires that the certificate shall be subscribed at the place of the manufacture, and at the time of the removal of the spirits by him who *is*, and not by him who *has been*, the licensed distiller or maker thereof, or his known or authorized clerk or agent.

Pleaded for the Defendant in Error.—The acts of parliament requiring persons dealing in spirituous liquors to take out a dealer's license, do not apply to any persons but such as buy and sell spirits, such only being dealers, in the proper sense of the word; and accordingly these statutes expressly except distillers and rectifiers, who do not buy and sell spirits, but only dispose of the spirits which they have made, in virtue of their license to distil. The expiry of the distillery license cannot prevent him from selling the spirits which had been made in his licensed distillery before such license expired; and by selling such spirits in these circumstances, he cannot be said to have assumed the character of a dealer in spirits, so as to be liable to the penalties of the acts, unless a *dealer's* license be taken out. To be a dealer in the sense of the act, it is necessary to be a buyer and seller of spirits; but the defendant is neither a buyer and seller of spirits, nor has he bought any spirits at all. He is merely disposing of the spirits made by him as a licensed distiller, before his license expired. And though his license to distil has expired, yet, in selling the spirits so distilled, under his expired license, he does not fall under the description of *dealer*, because he neither buys spirits, nor takes them into his custody, which is the criterion of a dealer given by the statute.

After hearing counsel this day, to argue the error assigned in this cause: The following question was put to the judges,—Whether, upon the matter stated in the special

verdict, the plaintiff in error was entitled to judgment on all or any of the counts on which that verdict was found?

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Whereupon, the Lord Chief Baron of the Court of Exchequer, having conferred with the rest of the judges present upon the said question, delivered their unanimous opinion, that the plaintiff in error was entitled to judgment on all counts on which that verdict was found. Then

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Ordered and adjudged that the judgment given in the Court of Exchequer in Scotland be reversed; and it is further ordered and adjudged, that judgment be entered for the plaintiff in error.

For the Plaintiff, *Sir John Scott, R. Dundas, John Mitford, Geo. Wood.*

For the Defendant, *Wm. Grant, Wm. Adam, Henry Erskine, Jas. Montgomery.*

Writ in Error, by Bill of Exceptions.

ANDREW HUME, Officer of Excise, prosecuting for His Majesty and Self, } *Plaintiff in Error.*

JAMES HAIG and JOHN HAIG, Distillers at Lochrin, } *Defendants in Error.*

House of Lords, 11th June 1799.

DISTILLERY LAWS—SURVEY.—Question, Whether the officers of excise were legally entitled to make a survey of distilleries with reference to a new act of Parliament, regulating the duties payable, and mode of exacting them, *before* the passing of the act; or whether they could make such survey under any previous existing act not then repealed? By the Court of Exchequer in Scotland, held such survey, before the passing of the act to be illegal. Reversed in the House of Lords.

Prior to 1798, the excise distillery duty throughout Scotland was much increased in amount, besides being altered in the principle and mode of exaction. The duty was laid on the size of the still, and not the quantity of wash, of low wines, or of spirits produced from it. As a necessary consequence of this system, all survey of the manufactured