

June 19, 1816.

REPAIRING  
AND RE-  
BUILDING OF  
CHURCHES.

Judgment *affirmed*, subject to a remit as above, in case the Appellants chose to bring the question as to the feuars before the Court within four months.

Agent for Appellants, GORDON.  
Agent for Respondent, RICHARDSON.

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SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

SPROTT (Procurator Fiscal of Edin- } *Appellant.*  
burgh)..... }  
Scott and others—*Respondents.*

Feb. 21, 1816.

TRADERS AND  
MANUFAC-  
TURERS IN  
NEW TOWN OF  
EDINBURGH  
EXEMPTED  
FROM PAY-  
MENT OF EN-  
TRY MONEY  
TO THE MA-  
GISTRATES.

Builders in  
New Town,  
Edinburgh.

Refuse to pay  
entry money,  
and why.

ANY master trader or manufacturer exercising his trade or calling within the new town of Edinburgh only, without exercising it in the old, is, by the proviso in the act 7 Geo. 3. c. 27. exempted from the payment of the tax called entry money, exacted by the magistrates of Edinburgh from those who enter as burgesses.

THE Respondents are master builders in the new town of Edinburgh, who refused to pay to the magistrates the entry money which each master trader or manufacturer who establishes himself in the city and exercises his craft within its limits or royalty is called upon to pay. The ground of the refusal was, that the act of 7 Geo. 3. c. 27., by which the royalty was extended over a great of the

new town of Edinburgh, did not entitle the magistrates to that tax. The question therefore depended on the construction of that act; the material part of which, as far as relates to the present purpose is as follows:

Feb. 21, 1816.

TRADERS AND  
MANUFACTURERS IN  
NEWTOWN OF  
EDINBURGH  
EXEMPTED  
FROM PAYMENT OF EN-  
TRY MONEY  
TO THE MA-  
GISTRATES.

Act 7, Geo. 3.  
c. 27. Preamble.

“ And whereas the Lord Provost, Magistrates, and  
“ council of the said city, as well in further execu-  
“ tion of the before recited act as in view to the ex-  
“ tension aforesaid, have expended large sums of  
“ money in purchasing houses and areas on the  
“ north side of the High-street of the said city, and  
“ in building a bridge, whereby an easy and proper  
“ communication will be opened to the city :

“ And whereas the grounds after-mentioned are  
“ without the royalty of the said city, and it being  
“ just and reasonable that the royalty of the said  
“ city should be extended over these grounds, in  
“ consideration of the great expense the city has  
“ been and will be put to in building the said  
“ bridge, and making the communication and access  
“ to the said city otherwise easy, and for the equal  
“ apportioning of public burdens and benefits, and  
“ administration of justice amongst all the real in-  
“ habitants of the place ; but as this salutary pur-  
“ pose cannot be accomplished without the authority  
“ of parliament, &c.” therefore it is enacted, “ That  
“ from and after the 24th day of June, in the year  
“ of our Lord 1767, the royalty of the City of  
“ Edinburgh shall be extended over, and compre-  
“ hend the following lands which now belong in  
“ property to the said city, &c.” (The Lands are  
then enumerated.) “ And that the said magistrates  
“ and town council, from and after the said 24th day  
“ of June, in the year of our Lord 1767, shall

Feb. 21, 1816.

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MANUFAC-  
TURERS IN  
NEW TOWN OF  
EDINBURGH  
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FROM PAY-  
MENT OF EN-  
TRY MONEY  
TO THE MA-  
GISTRATES.

“have and enjoy the same rights, privileges, and  
“jurisdictions over the said grounds hereby annexed  
“to and comprehended in the said royalty, as they  
“do now enjoy and exercise over and within the  
“limits of the present royalty by any law, statute,  
“or established custom, and shall and they are  
“hereby empowered to levy the same mails, duties,  
“customs, and other taxations, within these annexed  
“grounds, in the same manner and by such actions  
“at law as the said magistrates and town council  
“are entitled to use by any law, statute, or other-  
“wise, within the present royalty, for recovery of  
“such mails, duties, customs, and taxations, as  
“aforesaid.”

Proviso.

The following clause is that on which the Re-  
spondents' argument was founded: “Provided al-  
“ways, and it is hereby enacted and declared, that  
“it shall and may be lawful to all and every person  
“and persons to exercise any trade, or calling,  
“within the limits of the lands hereby annexed to,  
“and comprehended within the said royalty, any  
“thing in the present act to the contrary notwith-  
“standing: saving always, and reserving to the  
“several societies and incorporations, within the  
“city of Edinburgh, all such rights and privileges  
“which do now belong and are enjoyed by them  
“within the limits of the present royalty of the  
“said city.”

For the Respondents it was contended that by  
the above proviso, the exercise of any trade or call-  
ing in the new town was left perfectly open and  
free; saving however all corporate rights within the  
old Royalty.

The Appellant contended that the act ought to be

construed with reference to the constitution of the royal burghs, and the exclusive rights of burgesses, in carrying on trades and handicrafts within burghs, as established from the earliest times by different acts of the Scottish Parliament; and recognised in the decisions of the supreme Court in that country. He referred to the statutes of King William of Scotland, intituled, "The Libertie of the Merchantes Gilde," cap. 35 and 36. He also referred to the *Leges Burgorum*, cap. 18. by which it was enacted "that stranger merchants should buy and sell from burgesses only;" and cap. 139. of the same laws, declaring, "that burgesses may buy and sell freely within all parts of the realme."

Feb. 21, 1816.

TRADERS AND  
MANUFACTURERS IN  
NEWTOWN OF  
EDINBURGH  
EXEMPTED  
FROM PAY-  
MENT OF EN-  
TRY MONEY  
TO THE MA-  
GISTRATES.

The Appellant next referred to the acts 1466, cap. 11. 12. and 13. as establishing the same exclusive privileges in favour of burgesses within royal burghs, and to the acts 1592, cap. 154. and 155. declaring an obligation on all burgesses to pay entries, dues, and taxes, and perform burgage services. Reference was also made to the acts 1672, cap. 5.—1690, cap. 12.—1693, cap. 28.—and 1698, cap. 19. and 20.

It was further observed by the Appellant, that these rights and privileges belonging to royal burghs, and to the individual burgesses, for which in return persons made burgesses were to pay certain sums of money, in name of entries and taxes, were confirmed and rendered perpetual by the twenty-first article of the treaty of union (1707, cap. 7).

The Appellant next took notice of the following decisions pronounced by the Court of Session in support of the rights and privileges of royal burghs and of burgesses, as by law established, viz. *The*

Feb. 21, 1816.

TRADERS AND  
MANUFAC-  
TURERS IN  
NEW TOWN OF  
EDINBURGH  
EXEMPTED  
FROM PAY-  
MENT OF EN-  
TRY MONEY  
TO THE MA-  
GISTRATES.

Duncan v.  
Magistrates of  
Aberdeen.  
Fac. Coll.  
July 21, 1786.

*Magistrates of Glasgow against the Writers*, 21st November 1695, and 13th December 1695, reported by Lord Fountainhall—*Websters, Freemen in Stirling, against Unfreemen*, 26th March, 1658, reported by Durie; in which it was found that craftsmen unfreemen cannot exercise their trade within burgh, but may work in their houses in the suburbs—*Town of Linlithgow against Unfreemen of Borrowstownness*, 30th January, 1663, reported by Lord Stair, vol. i. p. 165—*Town of Glasgow and Dumbarton against Unfreemen of Greenock*, 7th December, 1676, reported by Stair, Dirleten, and Gosford—and *The Corporations of Mary's Chapel against Kelly*, 14th January, 1747, reported by Falconer: and he referred particularly to the following case, which most strongly recognised the rights of the magistrates of royal burghs to demand, that those exercising trade or craft within their burghs should become burgesses, and pay the accustomed dues or tax at entry:—*Duncan against the Magistrates of Aberdeen*, 21st July, 1786, of which the following account is given in the Faculty Collection: “Between the years 1620 and  
“ 1675 the fine or composition, paid in the town of  
“ Aberdeen by intrans burgesses, had been gra-  
“ dually increased by the magistrates from 100 to  
“ 400 merks. In 1699 these dues of entry were  
“ reduced to 100 merks; and on this footing mat-  
“ ters continued till 1779. About this time the  
“ trade of the town had greatly increased. A con-  
“ siderable debt too had been incurred in building a  
“ commodious harbour, and in other improvements  
“ of the same nature; and the dues of entry were  
“ augmented to 25*l.* sterling. Alexander Duncan

“ and other unfreemen brought an action for setting  
 “ aside this regulation,” of which they complained  
 as an undue extension of the town’s privileges.  
 “ Answered what is here complained of as an undue  
 “ extension of the privileges conferred on this town  
 “ is only a proper exercise of its established rights.  
 “ The benefit of exclusive trade forms an essential  
 “ part of the constitution of every corporation of  
 “ this sort, nor has any limitation been imposed as  
 “ to the manner in which it is to be communicated  
 “ to Strangers. As a due regard must necessarily  
 “ be paid to the advantages arising from such a com-  
 “ munication, this will always vary as trade and  
 “ commerce are thriving or in a declining state.  
 “ Thus the present alteration is fully justified by  
 “ the circumstances of the case; and the necessity  
 “ of an additional revenue on account of the ex-  
 “ penses recently incurred for the general utility  
 “ renders it altogether unavoidable.

Feb. 21, 1816.

TRADERS AND  
 MANUFAC-  
 TURERS IN  
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 EDINBURGH  
 EXEMPTED  
 FROM PAY-  
 MENT OF EN-  
 TRY MONEY  
 TO THE MA-  
 GISTRATES

“ The Court were unanimous in sustaining the  
 “ defences. Even the Judges who, in the question  
 “ from the town of Glasgow, voted against the ex-  
 “ action of the new imposts of any sort without  
 “ Parliamentary authority, expressed their opinion  
 “ that the price of the right of burghership might  
 “ be proportioned by the magistrates to the benefits  
 “ accruing from the participation of trade. The  
 “ Lords sustained the defences, thus giving effect to  
 “ the regulation in question.”

The Appellant then proceeded to comment on the  
 act of the 7 Geo. 3. for extending the royalty of the  
 City of Edinburgh, and attempted to show that the  
 clause in this statute, founded on by the Respond-  
 ents, did not establish in their favour the exemption

Feb. 21, 1816.

TRADERS AND  
MANUFAC-  
TURERS IN  
NEW TOWN OF  
EDINBURGH  
EXEMPTED  
FROM PAY-  
MENT OF EN-  
TRY MONEY  
TO THE MA-  
GISTRATES.

which they claimed ; and contended that the just construction of the clause in the act of Parliament founded on by the Respondents is, that it shall and may be lawful to all and every person and persons (*being burgesses*) to exercise any trade or calling within the limits of the annexed lands, although they be not entered with any of the inferior corporations of the city, saving and reserving to these incorporations their rights and privileges within the old royalty. This qualification, that persons exercising trade within the new royalty, although not entered with any of the corporations, must nevertheless be burgesses, was one which might either be expressly mentioned or might be omitted in the act of Parliament, for it imports nothing more than a statement of the public law of the realm, and was therefore as much to be understood and implied, though not expressed, as that the persons exercising trade should be liege subjects of the King and not aliens.

Action.

Upon action in the Dean of Guild Court for this entry money Sprott, the Procurator Fiscal for the city, obtained decree against the Respondents for payment. The decree and cause having been brought by suspension before the Court of Session, where, by interlocutor 6th of Dec., 1810, judgment was given in favour of the Respondents, and this judgment, upon appeal argued in the House of Lords on 21st of Feb. 1816, was *affirmed*.

Judgment for  
the builders,  
establishing  
the exemp-  
tion *affirmed*  
on appeal.

Agents for Appellant, SPOTTISWOODE and ROBERTSON.  
Agent for Respondents, ———.