SCOTLAND.

SHERIFF'S COURT; AND COURT OF SESSION.

(Second Division.)

HUGH DUNBAR* - - - *Appellant.*
JOHN AND THOMAS HARVIE - *Respondents.*

A court of justice cannot delegate its jurisdiction, and ought not to be guided by any foreign opinion upon a question of law, *e. g.* the admissibility of evidence.

The certificate of the secretary of the Board of Excise, as to the accuracy and effect of accounts in the books of the Excise, ought not to be received in evidence.

Whether accounts of stock kept in the Excise books are evidence between third parties, as to the delivery of goods? *Quære.*

Copies of such accounts may be given in evidence. *Semb.* on the ground that the originals are public books:—but in such case, the copies produced must be proved by a witness, who has examined them with the originals, and can swear to their accuracy.

Whether proof *prout de jure* of delivery of goods can be allowed, where, subsequent to the alleged delivery, written statements of account containing partial settlements have been delivered, containing no notice of disputed articles? *Quære.* *Semb.* that in such a case, where the dealing was between a publican and a distiller who kept the accounts, it requires strong evidence of delivery of the goods, to rebut the presumption arising from the accounts delivered.

Whether the account books of the distiller in such a case afford a *semi-plena probatio,* and lay a ground for the oath in supplement? *Quære.*

The Court of Session having given judgment on the ground of evidence which ought to have been rejected, but some of which evidence was capable of being pro-

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* The form of pleading, and the conduct of causes in Scotland being a subject now under discussion, this case is reported more at length than is necessary for the purposes of the report, with a view to exhibit a familiar example of the ordinary course of litigation in Scotland, upon a question of fact, decided in the Court of Session before the passing of the Jury Court Act.

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duced in an unobjectionable shape, and there being other evidence which might sustain the claim; on appeal against the judgment, the case was not remitted; but the judgment was reversed, on account of the small value of the matter in dispute, and the expense which a remit would cause.

THE appellant, who was an innkeeper at Westmuir, was in the habit, during four or five years, of purchasing whisky from the respondents, who were distillers and spirit-dealers "at Yoker."

When the goods were furnished, an invoice or account, specifying the quantity and price, was sent with them. The appellant's wife, who was unable to write or to read writing, was intrusted with the principal management of his business.

The respondents, when they received payments, marked them in the invoices, which was the only voucher or discharge for the appellant.

The transactions between the parties, which became the subject of discussion in the cause, extended from May 1808 to November 1810.

May 3, 1808. Process, No. 4. The first invoice or account proved in the cause, (and material to be stated) as delivered by the respondent to the appellant, is in the following terms:

"Mr. Dunbar,

1808. To John Harvie.

May 3.	To balance per account rendered	£.	59 9	6
Aug. 24.	By cash - - - - -		53 9	6
		£.	6 –	–

Process, No. 5. Aug. 27, 1808. This balance of 6*l.* was not noticed in the next invoice or account, which was in these terms:

"Yoker, Aug. 27, 1808.

Mr. Hugh Dunbar, Bought of John Harvie.

62 gallons malt aqua, at 13*s.* 6*d.* - -	£.	41 17	–
1808. Nov. 30. By cash - - - -		41 17	–

(signed) *Tho. Harvie.*"

The third invoice is in these terms:

" Yoker, Dec. 5, 1808.

Mr. Hugh Dunbar,

Bought of John Harvie.

67 gallons malt aquavitæ, at 16 *s.* - -	£.	53	12	–
1809. Mar. 15. By cash - - - -		53	12	–

(signed) *Tho. Harvie.*" Process, No. 6. Dec. 5, 1808.

The fourth invoice or account is in the following terms: Process, No. 7. April 4, 1809.

" Yoker, April 4, 1809.

Mr. Hugh Dunbar,

Bought of John Harvie.

66½ gallons malt aquavitæ, at 15 *s.* 5 *d.* -	£.	51	10	9
To balance of old account - - -		20	12	–
	£.	72	2	9
1809. Aug. 16. By cash - - - -		57	–	–
	£.	15	2	9

At the foot of this account, in the hand-writing of one of the respondents, is the following jotting:

	£.	51	10	9
		6	–	–
	£.	57	10	9

The cash credited in this last invoice or account was paid to the respondents by the appellant's wife, and the appellant acquiesced in the charge, as made in the account.

Some months after the delivery of the account last stated, the respondents called upon the appellant to pay the sum of 55 *l.* 12 *s.* as the price of a hogshead of whisky, alleged to have been delivered at his house on the 2d of June 1809, which, through inadvert-

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Proceedings in the Sheriff Court, 21st Dec. 1810.

ence, had been omitted in the statement of accounts. The appellant, denying that he had received the hogshead in question, and relying upon the accounts delivered by the respondents, as before stated, refused to pay the sum demanded; whereupon the respondents raised an action against the appellant before the sheriff of Lanarkshire, concluding for payment of 481 *l.* 16 *s.* 6 *d.* contained in an account then produced, deducting therefrom the sum of 438 *l.* 1 *s.* 9 *d.* paid in part, and credited in the said account, with interest and expenses. On this account a balance was claimed of 43 *l.* 14 *s.* 9 *d.* which, with the addition of 11 *l.* 17 *s.* 3 *d.* being a balance admitted to have been paid by the appellant, made up the sum of 55 *l.* 12 *s.* *the price of the disputed hogshead of whisky* alleged to have been furnished upon the 2d of June 1809.

The appellant, in his defences, having denied the receipt of the hogshead of whisky, both parties joined issue in the inferior Court, on the fact that the delivery of the hogshead of whisky alleged to have been furnished on the 2d of June 1809, was the only point in dispute between them, and created in the balance of accounts the difference already stated.

In this action the respondents craved that the appellant and his wife might be ordained to undergo a judicial examination; and also, that they should be ordained to produce the invoice of the seventh or disputed article of the account.

The appellant and his wife were accordingly ordained to undergo a judicial examination, but the appellant did not appear; and on the 22d May 1811, he

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was held as confessed, and a decree pronounced against him. Against this interlocutor he was afterwards reponed; and subsequently, his wife, Janet Dunbar, gave *a judicial declaration*, in which she declares, "That the declarant and her husband received "the whole articles of *aquavitæ* stated in the account, "libelled No. 2. of process, at the prices thercin "stated, excepting article 7, of date the 2d June "1809, which she denies having received; and "she always received invoices from the pursuers "with the spirits furnished: That the declarant "made no other payments to the pursuers than "what is credited in the said account which has "been read over to her: that any payments which "the declarant made to the pursuers were always "marked in the accounts by one of the pursuers, "and declares she cannot write; and further declares, "that any payments she made were done at Glas-"gow: That the declarant has produced all the "accounts in her possession relative to the spirits "in question, and she never received any account "of the spirits mentioned in the disputed article."

The declaration of the defender, Hugh Dunbar, was eventually not required, on a statement made by him that his wife was the person who took the chief management of his public-house, and was better qualified than he was to give an account of the different articles received.

Upon considering the declaration of the appellant's wife, the sheriff pronounced the following interlocutor: "Having considered the declaration 3d July 1811.
"of the defender's wife, *allows the pursuers a*
"*proof* prout de jure *of the disputed article of*

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" *the accounts, the defender of his defences, and* " *to both a conjunct probation*; and grants dili- " gence and commission to the clerk of court to take " the proof."

Against this interlocutor the appellant presented a petition, upon the ground that the memorandums which had been made at the foot of the different invoices, which he was in possession of, must *exclude* the admission of the proof which the respondents proposed to adduce, being parol evidence to contradict an account delivered in writing.

22d Oct. 1811. Upon advising the appellant's petition, the sheriff adhered to the interlocutor complained of, and in order that the appellant's case might receive full and complete discussion, he allowed the sheriff-depute's opinion to be had, after which, the following interlocutor was pronounced: " Having reconsidered the " petition for the defender, and former procedure, " and advised with the sheriff-depute, adheres to " the sentence complained of."

23d Oct.

Proceedings in the Court of Session.

After this interlocutor had been pronounced, the appellant advocated the cause to the Court of Session; it thereafter came before Lord Meadowbank as Ordinary, who, on hearing parties, appointed a condescendence to be given in by the respondents.

5th Mar. 1812.

14th Nov.

This condescendence was followed with answers. Upon advising which, Lord Meadowbank ordained informations to be printed, and laid before the Court. His Lordship at the same time issued the following note:

" Merchants accounts are put in, to a proverb, " under 'errors excepted,' but after so many suc- " cessive settlements as here occur, it seems to be a

" novelty to allow an error to be established, as if " every thing were open by entry in the pursuers " books, and a proof, *prout de jure*, of the delivery " of an article of great importance; this, however, " is done by the sheriff. It strikes the Ordinary, " that, under the analogy of the statute*, a proof of " such error, posterior to settlements made according " to the custom of the parties, ought only to be admit- " ted by oath, or writ of the defender, if not detected " on the face of settlements with the defender; for " if this is required after the mere lapse of three " years, *à fortiori*, should it be required where " subsequent accounts have been rendered and set- " tled, even though within the three years? The " Ordinary thinks, however, that such a rule of " practice, in a matter of such general importance, " if not already adopted by decisions, ought to re- " ceive the consideration of the Inner House, rather " than of a single Ordinary, before being entitled to " his authority."

By the informations printed in pursuance of the directions of the Lord Ordinary, the appellant insisted that such evidence as that proposed by the respondents was not admissible; and referred to the case, reported by Lord Kames in his Dictionary, of " Sir Walter Seton and Sir James Cockburn."

Case of Seton v. Cockburn, Dict. ii. 135.

The respondents, in their information, argued, that the single point for the consideration of the Court was, whether the hogshead of whisky in dispute had been delivered to the appellant or not? And they pleaded, in point of law, that they were

* Scots Stat. of Limitations, 1597, c. 83.

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entitled to establish this fact by parol evidence of their servants and clerks.

The respondents further contended that there was a difference between the case quoted and that in dispute, in the one the last account was signed by both parties, whereas, in the other, it was signed by only one of them; and that there were special circumstances in this case, which took it out of the general rule. They referred to entries* in their own books, and in the excise books, and other evidence which was contained in their information†. They further averred, and offered to prove, the *actual delivery* of the whisky in question into the appellant's premises, the Court below being of opinion, that this was necessary to make out their case.

Interlocutor. 10th Dec. 1813.

On the 10th December 1813, the Court pronounced this interlocutor: "Upon report of Lord "Meadowbank, and having advised the mutual "informations for the parties, the Lords before "answer ordain the pursuers to put in a con-"descendence, in terms of the act of sederunt, of "the facts and circumstances which they aver and "offer to prove in respect to the delivery of the "whisky in question, and that *quam primum.*"

The respondents accordingly gave in a condescendence, by which they undertook to prove,

Primo, That the cask intended for the whisky to be sent to Hugh Dunbar, and which he disputes, was cleaned, prepared, and filled by one of their workmen.

Secundo, That their clerk, who made the entries in the books, (already before the Court,) saw the

* See the Appendix. † See the Appendix to this case.

whisky measured, and saw it placed upon the cart.

Tertio, That the hogshead of whisky was actually conveyed to the house of Hugh Dunbar, and there delivered, along with the invoice and necessary *permit*, by the carters; who at the same time delivered a cask to Andrew Tennent, who lives a short distance farther, on the same road.

Quarto, That this permit was given up by Dunbar, in the usual manner, to the excise officer of the district, and was regularly transmitted to the permit examiner in the excise-office. It is proved by a certificate*, under the hand of Alexander Mitchell, permit examiner, that on the 2d of June 1809, a permit was granted for the removal of one cask, containing seventy-two gallons, *aquavitæ*, and was credited in Mr. Dunbar's stock in the excise books.

Quinto, That the excise officer of the district examined the stock in hand in Dunbar's cellar, compared it with the permit received, and made the necessary and usual return *to the officer of the district*, in whose books the disputed hogshead or whisky is accordingly entered. This is proved by certificate†, where the entry appears, "Hugh Dun-"bar, Westmuir, 2d June, seventy-two gallons."

Sexto, The excise officer on the 12th, and the supervisor of the district on the 28th of June 1809, examined and surveyed Hugh Dunbar's stock in hand; the latter comparing and checking off as correct the officer's survey. This is proved by a certificate‡, subscribed by the supervisor, Alex-

* See Appendix, p. 387.

† See Appendix, p. 388.

‡ See Appendix, p. 389.

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ander Williamson; and that there was in Dunbar's possession, "by permit, 2d June, seventy-two gallons *aquavitæ*." And it is farther proved, that the excerpts contained in this certificate are faithfully taken from the excise books by W. Wintour, diary clerk, who farther certifies, that "the *stock books* from "which these excerpts have been taken, appear to "have been from time to time regularly *examined* "and *checked* by the supervisor for the time, Alex- "ander Williamson, then officiating in Glasgow, "third district."

Lastly, this hogshead of whisky was regularly entered, as at "Dunbar's *debit*," throughout the complete and regular series of the excise books. This is proved by a certificate *, under the hand of Mr. Wintour, diary clerk.

The appellant, by his answers to the condescendence, pleaded, *in limine*, the incompetency of the proposed proof; and made the following objections to the admission of proof of the articles of the condescendence.

Ans. to Art. 1. This article is wholly irrelevant. If there had been a particular cask, which could have been sent to the respondent only, and to no other person, the cleaning and filling such a cask with spirits might create a presumption, that it was at least intended to be sent to the respondent; but when the pursuers aver that the cask was prepared and filled by their workmen, they aver nothing specific, but what must occur with regard to every cask in their possession.

Ans. to Art. 2. This article shows how far the pursuers can venture to go, in order to be allowed a proof. They

* See Appendix, p. 390.

had no clerk at the time when it is alleged the whisky was sent, one of the pursuers having then performed all the duties of a clerk. That your Lordships may be enabled to judge with what view this article is stated, it is submitted, that the pursuers ought to name the clerk by whom it is asserted they will prove that the whisky was measured, and placed on a cart.

Ans. to Art. 3.

This article exhibits the same fallacy. For to induce your Lordships to believe, that several witnesses can be adduced to prove the delivery, the pursuers speak of *the carters*, though only one could have been necessary to take care of a single cart; and it is submitted, that they ought to say who the alleged "carters" are.

In point of fact, the defender states that no cask of whisky from the pursuers was delivered, either to himself or to Andrew Tennent, who is named in this article, on or about the 2d of June 1809; and your Lordships will observe, that if a fraud was committed by one of the pursuers carters, (which it will be shown he could easily commit), the proof proposed by the oath of the carter or carters is just a proof by the evidence of the perpetrator of the fraud.

Ans. to Art. 4.

No permit was given up by the defender to the excise officer of the district. The defender has explained in his condescendence, and repeats, that permits for the district in which he resides were, at the time in question, left *in a house in Camlachie*, without in general being seen by the persons to whom spirits were permitted, and were there received by the excise officer. The certificate by Alexander Mitchell, therefore, proves nothing; for though it

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bears that a permit was granted, and *credited* in the respondent's stock on 2d June 1809, twenty such permits might have been given, and the quantities stated to account of the respondent, although not a drop of spirits had been added to his stock; for if the officer finds that the stock on hand of a dealer does not exceed the quantity stated, as permitted in the books, he has no occasion to inquire farther. It is only when there is an excess of stock above the quantity entered in the books as received by a dealer, that there can be any room for presuming illicit trade, and in that case the officer makes a seizure.

Ans. to Art. 5. In point of fact, the proper officer of the district in which the defender lives, at the date of the alleged permit, was not James Cunningham, but ——— M'Vey. It will be observed, too, that though the pursuers firm is "John and Thomas "Harvie," the entry in the certificate here mentioned is, "Thomas Harvie and Company."

Ans. to Art. 6. This article, and the certificate, referred to in it, requires peculiar attention. First, when permits are granted, the quantity in them is always a little less than the quantity actually sent; and in proof of this the defender produces a discharged invoice from George Pinkerton, a respectable dealer in Glasgow, who furnished to the defender, on 25th of May 1809, sixty-six gallons of whisky; but the entry in the certificate, shows that the permit was only for sixty-five gallons. In the same manner, as the disputed article is stated at sixty-nine and one half gallons, the permit should have been a little less; but it bears to be for seventy-two

gallons. Secondly, by the certificate it appears, that on the 3d of April the defender had on hand twenty gallons; and on the day following sixty-five gallons were added to his stock, making in all eighty-five gallons. But on the 17th April, he had eighty gallons of stock on hand; or, in other words, he had only sold five gallons during the *fortnight*, between the 3d and 17th April. In the same manner, on the 1st May, he had seventy-five gallons on hand; and on the 15th May seventy gallons; thus showing regular sales of five gallons in each *fortnight*. On the 28th of May, the stock on hand was one hundred and twenty gallons; and if the defender had received the disputed cask, there would have been added to this stock sixty-nine and one half gallons, making in whole one hundred and eighty-nine and one half gallons. Now taking the usual rate of sales in a fortnight, being five gallons, the defender's stock on 12th June in that case would have been one hundred and eighty-four and one half gallons; whereas on that date, by the certificate, it amounts only to one hundred and twenty-eight gallons. In other words, on the supposition that he had received the cask in dispute, his sales for the fortnight preceding the 12th of June must have been fifty-seven and one half gallons; that is, more than *eleven times* the sales for each of the three preceding *fortnights*. Thus the certificate furnishes conclusive real evidence, that the disputed cask was not received by the respondent, and entered in his last stock.

Any quantity may be entered in the excise books as added to the stock of a dealer, without the risk of detection, although there has been no actual addition to his stock, all that is requisite being, that the

Ans. to last Art.

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stock truly on hand shall not exceed the quantity which the excise books purport to have received into it.

10th March 1814. First interlocutor appealed from.

On the 10th of March 1814, the Court pronounced this interlocutor: "Upon report of the "Lord Justice Clerk, in absence of Lord Meadowbank, and having advised the mutual informations for the parties, with the condescendence "for the pursuers, put in by order of Court, and "answers thereto, advocate the cause, and before "answer grant warrant for letters of incident diligence at the instance of both parties against witnesses, and havers, for proving the several facts "and circumstances set forth by them in the said "condescendence and answers, and allow to both "parties a conjunct probation; grant commission "to," &c.

Under the commission issued by virtue of this interlocutor, the following proofs were taken:—

Purs. proof, p. 1.

Andrew Tennent depones, That though he was supplied with whisky by the respondents in the year 1809, "he cannot say whether he got spirits from "them in the month of June in that year."

Daniel M'Farlane depones, "That he has been "about fifteen years in the service of John Harvie, "and of John and Thomas Harvie, the pursuers. "That for several years preceding the year 1809, "and till Martinmas in that year, at which time the "pursuers got a place of business in Glasgow, the "deponent, and another man of the name of John "Russell, carted all the whisky from the pursuers "distillery to their customers. That he has on several occasions delivered whisky to the defender, and "in particular about the middle of June 1809, as

" the deponent thinks, he cleaned a cask at the
" distillery, and filled it with whisky for the de-
" fender; and he thinks the cask which he so cleaned
" would hold from sixty-six to sixty-eight gallons;
" *that afterwards the deponent delivered the said*
" *cask of whisky at the defender's house in West-*
" *muir*, and his wife was present when the deponent
" so delivered it; that John Russell was not present
" when he so delivered it, but on the day of the
" delivery, Russell accompanied the deponent from
" Yoker to Glasgow; that the deponent had charge
" of one cart of whisky, and Russell had the charge
" of another cart; that after coming to Glasgow, the
" deponent and Russell delivered two small casks of
" whisky to James Taylor, in Blackford's Wynd;
" that after this, Russell and the deponent separated,
" and the deponent by himself delivered a cask to
" Robert M'Omish, at the town-head of Glasgow;
" *and after this, the deponent delivered the cask of*
" *whisky at Westmuir to the defender, as before de-*
" *poned to*; and *while at Westmuir, he delivered*
" *another cask of whisky to Andrew Tennent, smith*
" *there; and when he so delivered the cask of*
" *whisky at the defender's house, he gave the invoice*
" *thereof, and permit, to the defender's wife*; that,
" at this time, Alexander Nisbet, at Knightswood
" coal-work, acted as clerk to the pursuers, and
" kept the book in which the whisky delivered to
" the customers was inserted." He further de-
pones, " That in general it fell under the deponent's
" department to clean the casks which were to be
" filled with whisky for customers; that the cask
" above deponed to was among the last which he
" cleaned for the defender: Depones, that there

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" was some person in the house besides the defender's " wife, who assisted him to carry the cask through " the house to a back cellar; but who that person " was the deponent cannot say: Depones, that " one of the grounds of his recollection of having " delivered the said cask to the defender in the " month of June, in the year aforesaid, is, that on " the same day he delivered two casks to James " Taylor, as before deponed to; and Taylor, on that " occasion, said to the deponent and Russell, who " accompanied him, that the day being very warm, " he supposed that a bottle of porter would be more " agreeable to them than a dram, and they took the " porter accordingly: Depones, that on no other " occasion does he recollect of having delivered on " the same day whisky to Taylor, M'Omish, Ten- " nent, and the defender *. That he can assign no " particular reason for recollecting having cleaned " this cask for the defender, but at the time when " the said cask was sent to the defender, it was the " deponent's duty to clean all the casks;" and being specially interrogated, " what is the reason for " his specifying the cleaning of this cask in parti- " cular in the month of June; depones, that in " consequence of the dispute about it, his attention " had at different times been specially called to the " period at which he delivered it." He then mentions a conversation which he had on the subject

* Taylor and M'Omish were not examined; and their names do not appear in the excerpt of the Excise stock-book printed in the Appendix, p. 388. But it does appear in the excerpt from the day-book of the Respondent's, Appendix, p. 380, that they are charged with goods on the same day (June 2) as the appellant

with the respondent Thomas Harvie; and being specially interrogated, whether or not the conversation he had with Mr. Harvie is one of the reasons for his naming the said month of June, depones affirmatively; but says, "that Mr. Harvie did not mention "to him the time at which the disputed cask of whisky "was delivered." It appears also by the depositions, that Mr. Harvie, in the course of this conversation, having mentioned that the deponent on the same day delivered whisky to Taylor, Tennent, and M'Omish, he depones, "that although he had not "been informed by the pursuer Thomas Harvie, or "any other person, he should have recollected that "on the same day he delivered, as before deponed "to, whisky to all these persons."

John Russell depones, "That, at Whitsunday "1810, the pursuers (respondents) got a place of "business in Glasgow; that, in the summer before "they so came to Glasgow, he recollects, that he "and M'Farlane came to Glasgow with two casks "of whisky; that M'Farlane had on his cart two "casks to James Taylor in Blackford's Wynd, a "cask to Robert M'Omish in the town-head, *a cask "to Andrew Tennent in Westmuir, and a hogshead "to the defender*, while the deponent had on his "cart a small puncheon of whisky to Glen and "Company in Rutherglen, and an ordinary puncheon "to Thomas Gibson in Calton; that M'Farlane "and the deponent went together to Taylor's, who "offered them a dram, but the day being warm, "they preferred a bottle of porter; that M'Farlane "wished the deponent to take from his (M'Farlane's) "cart the cask for M'Omish, and to go with it to

Purs. proof, p. 4. E.

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" M'Omish's, but this the deponent refused to do, " as it was out of his way, and he had a heavier " load than M'Farlane; that the deponent thinks " that the said quantities of whisky were *delivered* " *in the month of June, in the year aforesaid, as he* " *recollects that at that time he was employed on* " *the farm in hoeing potatoes.*"

Purs. proof, p. 5. G. Alexander Nisbet depones, " That in the year " 1809, and for several preceding years, he assisted " the pursuers in keeping their books;" and an extract or excerpt being taken from the waste-book, and being compared *by the commissioner, and found to be correct*, the witness depones, " That " the whole entries in the original waste-book " contained in the said excerpt are in his hand-writing." *

Def. proof, p. 3. Tennent depones, " That he recollects having " been supplied by them (the respondents) with " whisky in the year 1809; but he cannot say " whether he got spirits from them in the month of " June in that year, *as some of the invoices* which " he got from them about that time have not been

Def. proof, p. 4. " preserved by him." Tennent's wife depones " conform to the immediate preceding witness, her " husband."

Def. proof, p. 2. John M'Vey, excise officer, depones, " That " when the deponent was first on the said division, " *it was the practice of retailers to send the per-* " *mits of spirits, entering their stocks*, to the brewery " of Mr. Robert Aitken, in Camlachie, from whence " the deponent regularly received them, as he had " occasion to be there generally three or four times " a day."

* Appendix, p. 384.

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James Cunningham, excise officer, depones "con- "form to the preceding witness."

Andrew Tennent, depones, "That about the "year 1809 *the deponent*, to the best of his recol- "lection, was in the practice of sending the permits, "which *he received with the spirits*, sometimes to "the brewery of Robert Aitken, in Camlachie, and "sometimes to the shop of William Brown, grocer, "in Parkhead." Def. proof, p. 4.

"Elizabeth Thomson, his wife, depones "con- "form to the preceding witness."

John M'Vey depones, "That when visiting the "stock of the different spirit-dealers of the division, "it is his uniform practice *to gauge it*; *and if he* "*find it less than the stock for which they have* "*credit, their credit in the stock-book is reduced* "*immediately to the quantity actually in their pos-* "*session.*"

James Cunningham depones "conform to the "preceding witness."

The extracts of *accounts* from the account-books* of the respondents, and the stock-books of the excise, which are subjoined in the Appendix to this case, were also proved under the commission.

The Court, on the 15th November 1814, pro- nounced the following interlocutor: "On report "of Lord Meadowbank, and having resumed con- "sideration of and advised the mutual informations "for the parties, condescendence, answers, proof "adduced, and whole process, the Lords repel the "defences, and decern against the defender for pay- 15th signed. 16th Nov. 1814, second interlocutor appealed from.

* And it appears that the respondents tendered the oath in supplement, which was refused by the appellants.

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" ment of the sum of 55 *l.* 12 *s.* sterling, with inte-
" rest thereof, from the date of citation in this
" action, and till payment; find the defender liable
" in expenses, allow an account thereof to be given
" in, and remit to the auditor to tax the same, and
" to report."

An error of 14 *l.* in this interlocutor was rectified by consent.

7th July 1815. Third interlocutor appealed from.

The appellant then presented a petition against the above interlocutor, which being followed with answers, the Court, upon advising the same, being of opinion that the case depended materially on the credit due to the excise books, made a remit to James Bruce, secretary to the Board of Excise for Scotland, to examine those books, and report what credit appeared to him to be due to the entries contained in them. On the 12th of June 1815, Mr. Bruce made the following report:—" I have

June 12, 1815.

" considered this petition, and the answers, and I
" am of opinion, that the surveys mentioned in the
" excerpts*, engrossed in the answers, have every
" appearance of being taken from actual gauges of
" Dunbar's stock; and that the entries made in
" those books are held as sufficient evidence of the
" delivery and receipt of the exciseable articles
" therein mentioned, and particularly of the hogs-
" head of whisky in question."

The agent for the appellant, when this report was put into process, waited upon Mr. Bruce, to inquire how he could, consistently with the known facts of the case, make such a report to the Court. The result of this interview is stated in the following " note," which was presented to the Court below:

* See the Appendix.

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" In this case your Lordships, before answer, remitted " to Mr. Bruce, secretary to the excise, to peruse " the petition and answers, and, if necessary, to call " for the attendance of parties, and to inquire into " the facts alleged by either party with regard to the " excise books and permits mentioned in the plead- " ings, and to report the result of such inquiry to " the Court, and particularly to state how far the " entries in these books can be deemed conclusive " evidence of the delivery of the hogshead of whisky " in question into the stock of the petitioner (ap- " pellant).

" The petition and answers, with the remit by " the Court, were, by the agent for the pursuers " (respondents), laid before Mr. Bruce, who on the " 12th instant perused the same, and wrote out the " report in process. The agent for the defender " was rather surprised that Mr. Bruce should have " made out a report, *without so much as seeing the* " *disputed entries contained in the stock-book*, kept " for the division where the defender resides, and " *which was then lying in his (the agent's) pos-* " *session.* Accordingly he took the liberty of wait- " ing upon, and mentioning this circumstance to " Mr. Bruce, *who stated to him that the cause ought* " *to have been remitted to the sheriff of the county,* " *to inquire into the facts alleged by the parties,* as " tending to support or detract from the credit due " to the excise books; that he had examined the " persons in the excise-office, who made out the " excerpts from the books mentioned in the plead- " ings, by which he was satisfied that these were " fairly taken; and therefore *he had no occasion to*

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" *see any books on the subject, because; in his* " *official capacity, he could never admit that there* " *was any error in the excise books.* Mr. Bruce " further stated, that the practice of *stamping en-* " *tries* has been known to the honourable Board; " and when the officer was detected in doing so, he " was dismissed from the service.

" Correct, in so far as relates to the conversation " with, (signed) " *James Bruce.*"

" 15th June 1815."

7th July 1815. Second interlocutor appealed from.

The Court, of this date, pronounced the following interlocutor: " The Lords having advised this " petition, with the answers thereto, and report of " Mr. Bruce, as directed by the Court, adhere to " the interlocutor reclaimed against, and refuse the " desire of the petition, with this variation, that the " sum decerned for shall, as consented to by the re- " spondents, be restricted to 43*l.* 14*s.* 9*d.* sterling, " with interest thereof from the date of citation, and " with expenses as formerly found due."

Against these interlocutors the appeal was presented.

For the Appellants, the *Attorney-General*, and *Mr. Wetherell*:

Argument, May 10th and 12th.

By the Scotch law, a settled account cannot be opened so as to admit proof of error. A party there is not permitted, as in the courts of equity in England, to surcharge and falsify. Even in those Courts there must be a demonstration of error in the accounts; suspicion and probability of error is not sufficient. *Clark* v. *Thirkill* *, *Seton* v. *Cockburn* †.

* Before the Vice-Chancellor, 1820. Not reported. It was a common bill to open a settled account.

† Dict. of Decis. vol. 2, No. 135.

As to the excise books, they cannot be evidence as between third persons; if so, any person might be charged to any extent by a collusive entry in the excise books.*

Independently of the excise books, the case of the respondents rests upon the evidence of M'Farlane and Russell. The question related to three deliveries in 1809. They prove only one delivery. To have sustained their case, they should have proved the deliveries in April and August. M'Farlane, having carted all the whisky, could have proved all the deliveries; he only *thinks* that he delivered a cask about the middle of June. It appears in proof, that various other deliveries of whisky took place on the same day. They might have called the persons to whom it is alleged that such deliveries were made, to corroborate the evidence of M'Farlane, which they have omitted to do. Russell speaks only to belief, and proves nothing as to any delivery but one. The excise books prove no delivery to Taylor, M'Omish, &c. on the 2nd of June, as represented by the respondents witnesses.

To the admissibility of the excise books as evidence, there were certainly objections made in the Court below. The excise-officer was not examined, but a person to prove the excerpt from the books, in which there is a material error: it omits an intermediate entry, which shows the danger of admitting such evidence. The permit is delivered to the excise by the person who removes the stock; not by the retailer, who receives it. In point of admissibility, there is no difference between original and con-

* On this point see the authorities in the notes pp. 378, 379.

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firmatory evidence. If the party be dead, as in *Pitman* v. *Madox**, the evidence is admissible, according to the authority of a class of cases. The admission of the *semiplena probatio*, according to the Scotch law, depends on the circumstances of the case. In the authorities referred to by Erskine † on that subject, the circumstances were very peculiar: the defender being dead, his oath of verity could not be taken, and on this account the oath of the pursuer was admitted. Where there are adverse witnesses, *semiplena probatio* is not admissible; here they have taken the oath of the defender's wife. According to Erskine, "the *semiplena probatio*, or oath in supplement," is to supply an imperfect or defective evidence by the "parties own oaths; *e. g.* in the case "of furnishings made by shopkeepers, &c. where the "quantities furnished, or the prices of them, are "not proved by two concurring testimonies, &c. But "where the imperfect evidence laid before the judge "does not, in his apprehension, amount even to *semi-*"*plena probatio*, the parties oaths in supplement "ought not to be put." In this case, the accounts of the respondent were very inaccurate; there were omissions on both sides of the account.

For the Respondents, *Mr. C. Warren*, and *Mr. Stephen*:

The defence made by the appellant is not that he has paid for the goods, but that they were not delivered. The evidence to prove that the cask in question was delivered at the house of the appellant is, 1. the entry in the books of the respondents and of the excise; 2. the depositions of the servants of the

* 2 Salkeld, 690. † B. 4, tit. 2, s. 14.

respondents; 3. the evidence of Mr. Bruce. No objection to that evidence was raised in the Court below, either by the advocates or by the judges. Whatever may be thought of such evidence in England, it is admissible by law in the Courts of Scotland; and this House, sitting as a Court of Appeal from Scotch jurisdiction, must decide by the rules of the Scotch law.

It is admitted, that, according to the authority quoted from Erskine, merchants books are not full evidence; but the law of Scotland in such case admits the oath in supplement. If it be law, however inexpedient, it must be the rule of decision between the parties. The books afford a *semiplena probatio*, which, if supported by one witness, becomes *plena*, provided the books are correctly kept, and the merchant make oath, in supplement, that the transaction is there justly stated*: that proof the respondents have offered, and it has been rejected by the appellant. The invoice delivered to the appellant's wife has not been produced, though required. The word "balance," on which so much argument is built, occurs only in one of the jottings. As to the fact and time of the delivery, M'Farlane could not have confounded June with August. His evidence is confirmed by Russell; and as to the conversation between witness and the party respecting the transaction, it ought not to affect the credit due to the evidence. It is in the necessary and ordinary course of conducting actions. A plaintiff would not act very wisely in bringing an action, and proceeding to trial, without knowing what his witnesses could prove.

The Lord Chancellor:—It is manifest from ob-

* Ersk. Inst. b. 4, tit. 2, s. 4.

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servations of the judges of the Court of Session, appearing in the notes, that if it had not been for the certificate of Mr. Bruce, as to the excise books, they would have decided against the respondents; whether they ought to have done so, is another question. It is difficult to ascertain on what principle the Court referred this point to Mr. Bruce. If, according to law, the Court could have dispensed with the production of the books themselves, on the ground that they were public documents, and could not without public inconvenience have been removed; then they should have required, as to such parts as were material to be given in evidence, copies properly attested and examined. That a court of justice should refer to any man, to know whether a document is or is not evidence, is to me a novelty. If the reference had been proper in itself, the report, considering how it was framed, is by no means satisfactory: Mr. Bruce admits that he did not examine, he did not even see, the books, but only conversed with the excise-officers, and upon their allegations and his own confidence is satisfied, and returns a certificate accordingly. Is it in Scotland, *præsumptio juris et de jure*, that an exciseman cannot be mistaken?

For the Respondents:—It is said that because a subsequent account was settled, the omission to charge the item in question ought to be clearly shown. That demonstrative evidence is necessary to open an account, is an objection not now maintainable. As to *Seton* v. *Cockburn*, the question was between partners for an account. Balances of former accounts had been brought into subsequent accounts which were settled; under such circumstances the question was, whether the final account included

the settlement of previous accounts, vouchers having been delivered up? In the present case, no vouchers passed; no formal account was delivered; the papers given in the hurry of business were mere memoranda of an account current, signed only by one party. By the English law, error may be shown even after an account has been settled.

If the demonstrative evidence said to be required in this case means direct evidence, as contradistinguished from presumptive, there is such evidence. The issue is upon a fact, whether a hogshead of whisky was delivered, and it is confined to a question of time. On this point there is the evidence of the man who delivered it to the wife, with an invoice or permit. His evidence is corroborated by another witness. A third witness proves the entry of the delivery in the books. In England, the practice is to prove the delivery by shop-books, and the servant who made the delivery. Upon an action of trover for a gold watch, where the plaintiffs contended that the defendants being watchmakers, with whom he had left the watch for repair, had delivered it to a stranger. The defendants, on the other hand, contending that it was delivered to the person appointed by the plaintiff to receive it. By the production of the shop books, an entry appeared, not in the hand-writing of the shopman, nor made in his presence; but seen by him soon after it was made: that evidence, given by the shopman, was received*.

* 1 Esp. N. P. C. 328, *Digby* v. *Stedman*. Upon this subject, see *Sikes* v. *Marshall*, 2 Esp. 705; 7 Jac. 1, c. 12. *Lord Torrington's case*, 1 Salk. 285; N. P. 282, 283. *Cooper* v. *Marsden*, 1 Esp. 1. *Harrison* v. *Blades*, 3 Camp. 357. *Calvert* v. *Arch. of Canterbury*, 2 Esp. 646.

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The Lord Chancellor :—What was the verdict in that case?

For the Respondents :—It does not appear. In another case *, the shopman being dead, the shop-books were of themselves held to be evidence of delivery. To the evidence from the excise-books, it is objected that nothing but a certificate is produced; but this objection was not raised before the Court of Session; from which a presumption arises, that by the law of Scotland the certificate is good evidence without production of the books. If the objection had been taken, the respondent might have amended his case by producing the books; in England a new trial, on the ground of the admission of improper evidence, if the objection was not taken at the trial. The excise-books were not produced to prove the delivery of the goods, but to show that the permit was delivered by the retailer, Mr. Dunbar, to the officer. M'Vey depones, that the permits are usually left by the retailer.

The Lord Chancellor :—Did you ever hear of a certificate being admitted, such as in this case? The excise books, if they be evidence at all, ought to be proved by the oath of a party who has made or seen a copy, and having compared it with the original, proves it to be accurate †.

See also upon the subject of evidence against third persons, by entries in private and public books, *Pritt* v. *Fairclough*, 3 Campb. 305. *Hagedorn* v. *Reid*, 3 Campb. 377. 379. *Higham* v. *Ridgway*, 10 East 109. *Doe* v. *Robson*, 15 East, 32. *Goss* v. *Watlington*, 3 Bro. & Bi. 132; *ex parte Taylor*, 1 Jac. & Wa. 483. *Hunt* v. *Andrews*, 3 Bar. & Al. 341; *Wynne* v. *Tyrwhit*, 4 Bar. & Al. 376.

* *Pitman* v. *Madox*, 2 Salk. 690.

† See *Fuller* v. *Fotch et al.* Carthew, 346. where Holt, C. J.

For the Respondent:—The appellant is estopped from making that objection, for he has used the books in evidence. It is not to be presumed, from the practice of the English law, or any general principles, that such a certificate is not good evidence by the law of Scotland.

The Lord Chancellor:—We have nothing but this certificate; the books are not before the Court. The judges below think all the other evidence trash, and rely upon this certificate.

For the Respondent:—In England questions are tried by the certificate of the bishop: So of the marshal of the King's host. The evidence of Mr. Bruce was taken by the Court for the behoof of the appellant. If his evidence were struck out, enough would remain to support the case of the respondent.

The Lord Chancellor:—Can you support the second interlocutor of the Court of Session, by which it appears, that on the report of Mr. Bruce they found their judgment, and adhere to their first interlocutor on the foundation of that report? Can these interlocutors be supported in these terms, unless the report of Mr. Bruce is supported?

For the Respondents:—The invoices and receipts are not evidence for want of stamps, according to the statute 48 Geo. III. c. 149. That point has been decided*. The fraudulent intent of the appellant is apparent from his winking at the small overcharge against him in the former account, for fear that, in stirring the question, the greater error against

in an action of trespass, admitted in evidence a copy of a conviction by Commissioners of Excise, the original of which was made by entry in their books.

* *Wright* v. *Shawcross*, 2 B. & A. 501.

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the respondents, and in his favour, might be discovered in the course of investigation.

The Lord Chancellor :—The cause is highly important, as involving difficult questions on the subject of evidence. Now, under the Jury Court Act, an issue would be directed in such a case. If the House of Lords affirm the judgment, it would be considered as a direction, and established as a rule, to admit such evidence (including the certificate) before a jury. The subject, however, is so trivial, that if it were not for the important principle which is brought into question, it would be right to decide the case *instanter*.

If all the interlocutors could be affirmed, that might be satisfactory. But as three of the Judges, who sustain the demand, express an opinion that they could not do so but upon the evidence of Mr. Bruce's certificate, it would be dangerous to affirm a judgment standing upon such ground.

It is contended, that by the law of Scotland all these matters—the parol testimony, the books, the certificates, the excerpts, and even the opinion of Mr. Bruce, are admissible evidence. I ought to be well assured on this point, before I establish such rules of evidence. It is marvellous if such things as the certificate of Mr. Bruce and the excerpts, (produced as they were), can be considered by the law of that country as admissible evidence.

What is truly the rule of law on these points in Scotland, it is highly important to know. Questions of fact, such as we now have to decide, will hereafter come before juries in Scotland, who must be guided by their own law of evidence. It is important, there-

fore, to ascertain by the present decision, so much of that law as the question involves. If we should affirm the judgment of the Court below, without stating the grounds, the judgment on this appeal would be quoted before juries to sanction the admission of such evidence, including all the particulars which were admitted in this case. If, therefore, in the Court of Session, evidence was admitted which ought to have been rejected, together with evidence properly admissible, we ought to inform the Courts of Scotland what evidence we think admissible, and what ought to have been rejected. If I were to speak as an English lawyer, I should immediately express my opinion without doubt. But as a Scotch lawyer, I am required to consider what part of this evidence ought to be admitted, and what part to be rejected.

21st July.

Lord Chancellor :—There is a case which stands for judgment, which I am extremely sorry ever to have seen here—it relates to the price of a cask of whisky ; and the question is, whether the judgment of the Court of Session, which has fixed the keeper of a public-house with the price of that cask of whisky, is a judgment which is or is not supported by the evidence given in the cause. What was the real case it is a little difficult to state, What would have been the judgment of the Court of Session upon so much of the testimony which has been looked to in this case, as has about it (if I may so speak) the character of evidence, I do not know; because it appears to me, that there has been a great deal made use of in this case, as testimony, which has no pretence to

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be considered as evidence that ought to be admitted. Endeavouring to separate so much of the testimony as has not the character of evidence, from so much of the testimony as has the character of evidence, I think, upon what I deem to have the character of evidence, that this case ought to be decided, not in favour of the respondents, but in favour of the appellant; and I am the rather inclined to advise you so to decide, because I am quite certain that if we were to take another course, and which is the only other course that we really could take, namely, to remit back to the Court of Session, to reconsider the case of this cask of whisky, we should put both parties to a very great expense. In the next place, if we did not remit it back to the Court of Session, the consequence of that would be, that the Court would take it for granted that in all similar cases similar testimony was to be received in evidence; taking, therefore, the case, and considering it now upon so much of the testimony as is evidence, I think the respondents here, the pursuers below, have failed in making out, by proof as competent as ought to be offered in such a case, the delivery of this cask of whisky; and that that proof on their part ought to be much more clear than it is in this case; because, as to what is supplied to public-houses, the distillers are in truth the persons who keep the accounts between themselves and these public-houses; and where they have delivered accounts, the import of which is directly against the claims they now make, it would be a very unwholesome thing to apply to the general transactions of such persons, a principles which would call upon your lordships to decide, with respect to written

documents delivered by themselves, that those written documents did not contain the truth with respect to the delivery. It may have been in this case (I cannot undertake to say positively) that this cask of whisky got to the public-house, but I say there is not evidence in this case to sustain the claim, if you throw out of the case the testimony which ought not to be received. Under the circumstances I can only move your lordships, that this interlocutor be reversed; but that each party should pay his own costs.

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Ordered and adjudged, that the interlocutors complained of be reversed, and the defender assoilzied.

APPENDIX.

EXCERPTS from the Day Book of Messrs J. and T. HARVIE.

Friday, 2d June, 1809.

39.	Sold *Hugh Dunbar, Westmuir* - - -	69½ gs.	at 16*s.* - - - - - - - -	£. 55	12 –
44.	Andrew Tennent, ditto - - -	43½	at 16*s.* - - - - - - - -	34	16 –
45.	James Taylor, Glasgow - - -	35½	at 9*s.* - - - - - - - -	15	19 6
45.	Ditto - - - - - - -	39½	at 9*s.* - - - - - - - -	17	15 6
41.	Robert M'Omish, ditto - - -	66½	at 9*s.* 6*d.* - - - - - -	31	10 9
67.	John Glen and Co. Rutherglen - -	33½	at 15*s.* 6*d.* - - - - - -	25	19 3
63.	~~Thomson~~ Thomas Walker, Duntochar - -	44½	at 15*s.* 6*d.* - - - - - -	36	16 3
74.	Thomas Gibson, Calton - - -	146	at 8*s.* 6*d.* - - - - - -	62	1 –

Glasgow, 25th April, 1814.

This is the excerpt referred to in the deposition of Alexander Nisbet. And the commissioner certifies that the word " Thomas" therein inserted, in place of " Thomson," is of the commissioner's handwriting, and was interlined by him upon comparing the excerpt with the original entries.

(signed) *Alexander Nisbet,*
Robert Davidson, Commissioner.

NOTARIAL Excerpt from the Day Book of Messrs. JOHN and THOMAS HARVIE.

Wednesday, Dec. 2, 1807.	Sold Hugh Dunbar, Westmuir, 66½ gallons at 13/ - - - -	£.	43	4 6
Friday, Feb. 12, 1808.	Sold Hugh Dunbar, Westmuir, 68½ gallons at 13/ - - - -		44	10 6
Wednesday, Ap. 22, 1808.	Received from Hugh Dunbar, part - - - - - - - -		20	– –
Tuesday, May 3, 1808.	Sold Hugh Dunbar, Westmuir, 47 gallons, at 13/6 - - - -		31	14 6
Wednesday, May 4, 1808.	Received, Hugh Dunbar, part - - - - - - - - -		40	– –
Wednesday, Aug. 24, 1808.	Received from Hugh Dunbar, part - - - - - - - -		53	9 6
Saturday, Aug. 27, 1808.	Sold Hugh Dunbar, Westmuir, 62 gallons, at 13/6 - - - -		41	17 –
Tuesday, Nov. 29, 1808.	Received from Hugh Dunbar, part - - - - - - - -		41	17 –
Monday, Dec. 5, 1808.	Sold Hugh Dunbar, Westmuir, 67 gallons, at 16/ - - - -		53	12 –
Wednesday, Mar. 15, 1809.	Received from Hugh Dunbar, part - - - - - - - -		53	12 –
Tuesday, Ap. 4, 1809.	Sold Hugh Dunbar, Westmuir, 66⅔ at 15/6 - - - - -		51	10 9
Friday, June 2, 1809.	Sold Hugh Dunbar, Westmuir, 69½ at 16/ - - - - -		55	12 –
Wednesday, Aug. 16, 1809.	Received from Hugh Dunbar, part - - - - - - - -		57	– –
Thursday, Aug. 17, 1809.	Sold Hugh Dunbar, Westmuir, 87 gallons at 16/ - - - -		69	12 –
Wednesday, Dec. 27, 1809.	Received from Hugh Dunbar in part of his account - - - -		40	– –
Thursday, Dec. 28, 1809.	Sold Hugh Dunbar, Westmuir, 72½ gallons, at 16/ - - - -		58	– –
Wednesday, June 13, 1810.	Received from Hugh Dunbar in part of his account - - - -		100	– –
Monday, June 18, 1810.	Sold Hugh Dunbar, Westmuir, 41½ gallons at 15/6 - - - -		32	3 3
Wednesday, Nov. 14, 1810.	Cr. Hugh Dunbar, in part of his account - - - - - -		32	3 3

Jas. Cummings, Witness.
Murdoch Mathieson, Witness.

(signed) *Mich. Gilfillan*, N. P.

EXCERPT from the Ledger of Messrs. JOHN and THOMAS HARVIE, Spirit Dealers in Glasgow and Yoker.

HUGH DUNBAR, WESTMUIR.

1807.									1808.						
Dec. 2.	To cellar at	13/	per gallon for		66½	£.	43	4 6	April 22.	By Cash	- - - -	£.	20	– –
1808.									May 4.	By do.	- - - -		40	– –
Feb. 12.	To do.	at 13/	- -		68½		44	10 6	Aug. 24.	By do.	- - - -		53	9 6
May 3.	To do.	at 13/6	- -		47		31	14 6	Nov. 29.	By do.	- - - -		41	17 –
Aug. 27.	To do.	at 13/6	- -		62		41	17 –	1809.					
Dec. 5.	To do.	at 16/	- -		67		53	12 –	March 15.	By do.	- - - -		53	12 –
1809.									Aug. 16.	By do.	- - - -		57	– –
April 5.	To do.	at 15/6	- -		66½		51	10 9	Dec. 27.	By do.	- - - -		40	– –
June 2.	To do.	at 16/	- -		69½		55	12 –	1810.					
Aug. 17.	To do.	at 16/	- -		87		69	12 –	June 13.	By do.	- - - -		100	– –
Dec. 27.	To do.	at 16/	- -		72½		58	– –	Nov. 14.	By do.	- - - -		32	3 3
1810.												£.	438	1 9
June 13.	To do.	at 15/6	- -		41½		32	3 3						
						£.	481	16 6						

What is above and on the preceding pages written are true, full, and exact copies of the original entries in the day-book and ledger of Messrs. John and Thomas Harvie, spirit dealers in Glasgow, without addition, diminution, or alteration whatsoever, the same having been duly collationed and compared by me, notary public at Glasgow, the 2d day of May, 1812 years, before these witnesses, James Cummings and Murdoch Mathieson, my clerks.

Jas. Cummings, Witness.
Murdoch Mathieson, Witness.

(signed) *Mich. Gilfillan*. N. P.

ACCOUNT CURRENT between Hugh Dunbar and John and Thomas Harvie.

Dr. Mr. Hugh Dunbar, Change-keeper, Westmuir,
To John and Thomas Harvie.

1807.									
Dec. 2.	To 66 ½ gallons aquavitæ at			13/.	-	-	-	£. 43	4 6
1808.									
Feb. 12.	To 68 ½	do.	do.	13/.	-	-	-	44	10 –
May 3.	To 47	do.	do.	13/6	-	-	-	31	14 6
Aug. 27.	To 62	do.	do.	13/6	-	-	-	41	17 –
Dec. 5.	To 67	do.	do.	16/.	-	-	-	53	12 –
1809.									
April 5.	To 66 ½	do.	do.	15/6	-	-	-	51	10 9
June 2.	To 69 ½	do.	do.	16/.	-	-	-	55	12 –
Aug. 17.	To 87	do.	do.	16/.	-	-	-	69	12 –
Dec. 27.	To 72 ½	do.	do.	16/.	-	-	-	58	– –
1810.									
June 18.	To 41 ½	do.	do.	15/6	-	-	-	32	3 3
								£. 481	16 6

1808.									
April 22.	By cash	-	-	-	-	-	-	-	£. 20 – –
May 4.	By do.	-	-	-	-	-	-	-	40 – –
August 24.	By do.	-	-	-	-	-	-	-	53 9 6
Nov. 29.	By do.	-	-	-	-	-	-	-	41 17 –
1809.									
March 15.	By do.	-	-	-	-	-	-	-	53 12 –
August 16.	By do.	-	-	-	-	-	-	-	57 – –
Dec. 27.	By do.	-	-	-	-	-	-	-	40 – –
1810.									
June 13.	By do.	-	-	-	-	-	-	-	100 – –
Nov. 14.	By do.	-	-	-	-	-	-	-	32 3 3
	Balance due John and Thomas Harvie								43 14 9
									£. 481 16 6

CERTIFICATE from the Excise Books.

These do certify, That permit was granted for the removal of British aquavitæ, from the stock of Thomas Harvie and Company, of Glasgow, to the stock of Hugh Dunbar, of Westmuir, viz. on the 4th of April 1809, one cask containing 72 gallons aquavitæ; and on the 2d of June 1809, one cask containing 72 gallons aquavitæ; and that both quantities of spirits were credited in Mr. Dunbar's stock, in the excise books.

Extracted from the excise books, at Edinburgh, this 17th day of March 1812, by (signed) *Alexander Mitchell*,
Permit-examiner.

EXCERPTS from Glasgow, Eleventh Division and Third Quarter, Excise Stock-book, kept, amongst others, upon the stock of Hugh Dunbar, spirit-dealer at Westmuir, by James Cunningham, officer of excise; which book includes the 6th of April and 5th July 1809.

EXCERPT from Scheme of British Spirit Permits received by the above-mentioned officer of Glasgow, Eleventh Division, during Third Quarter, as taken from the book before described.

No. of Books and Permit.		From what Collection.	From what Division.	From whom sent.	To whom sent.	Where.	Date of Permit.	No. of Casks.	Quantity.	Quality.	Limitation of Permit. Days.	Limitation of Permit. Hours.	By what Officer granted.
15	51	Glasgow -	5th Brandy -	John Fulton -	R. Dunsmore	Shuttleston -	May 31. e. 5.	01	63	Aqm.		03	James Morrison.
02	32	Ditto - -	Lennox Mill -	John Freeland -	John Paul -	BroomhouseToll	June 1. m. 7.	01	30	Ditto		07	James Speers.
06	21	Linlithgow	Craigend -	James Miller -	John Fisher -	Hogganfield -	May 30. m.p.11.	01	43	Ditto		30	Alex. Tod.
05	12	Glasgow -	Hamilton -	William Smellie -	Alex. Mair -	Toll Cross -	June 1. e. 7.	01	05	Ditto		06	James Jolly.
01	37	Ditto - -	Patrick - -	Th. Harvey & Co.	And. Tennent	Westmuir -	2d. m. 10.	01	44	Ditto		05	Robert Aitken.
01	68	*Ditto* - -	Ditto - -	*Ditto* - -	*Hugh Dunbar*	*Westmuir* -	2d. m. 10.	01	72	Ditto		05	Ditto.
35	40	Ditto - -	Glasgow, 2d Bry.	Wilkie and Downs	Alex. Scott -	Toll Cross -	3d. m. 9.	01	130	Ditto		02	D. Campbell.
23	35	Ditto - -	Ditto, 7th Bry.	Robert Smith -	T. Dumbreck	Drygate Toll -	6th m. 11.	01	64	Ditto		01	James Cullen.

The above is a true excerpt made by me from scheme,

Excise-office, Edinburgh,
December 29th, 1813.

(signed) *W. Wintour*, Diary Clerk.

EXCERPT from that part of Eleventh Division of Glasgow Stock-book, for Third Quarter of Year ending 5th July 1809; stating the different Surveys made by the Officer of Excise on the Spirit Stock belonging to Hugh Dunbar, spirit dealer at Westmuir, during that Quarter which included 6th April and 5th of July 1809.

Date of Survey.	Stock Aquavitæ.	Quantities of Spirits brought into Stock, and Date of Permit. Aquavitæ.	Quantity sent out, and Date of Permit. Aquavitæ.
April 3. e. p. 3.	20 gallons transferred from last quarter's book	April 20 gallons	
17. m. p. 11.	80 —— by permit	4. m. 9. 65 ——	
May 1. m. p. 11.	75 ——		
15. m. p. 10.	70 ——		
29. m. p. 10.	120 —— by permit	May 25. e. 1. 65 ——	
June 12. m. p. 10.	128 —— by permit	June 2. m. 10. 72 ——	
26. e. p. 2.	120 ——		
28. m. p. 11.	100 —— A. W.		

The stock of Hugh Dunbar, in Westmuir, was surveyed by me upon the 28th June 1809.

(signed) *Alex. Williamson*, Supr.

I hereby certify, That the excerpts stated on this and the two preceding pages are faithfully made by me from the excise book, of the date and place therein mentioned.

Edinburgh Excise-office, 29th Dec. 1813.

(signed) *W. Wintour*, Diary Clerk.

I hereby further certify, That the stock-book from which these excerpts have been taken appears to have been from time to time regularly examined and checked by the supervisor for the time, Alexander Williamson, then officiating in Glasgow, third district.

(signed) *W. Wintour.*

I HEREBY certify, That I have searched those of the excise books, for the year 1809, in which Hugh Dunbar change-keeper at Westmuir's stock of spirits were then kept account of, and find recorded therein a permit dated 2d June 1809, for a cask containing 72 gallons of aquavitæ, purporting to have been sent from the stock of Thomas Harvie and Company, to Hugh Dunbar at Westmuir; that those seventy-two gallons of aquavitæ appear from the above-mentioned book to have been placed in the usual manner at that time to Dunbar's debit, by the then officer, and shown in his stock, on the officer's next succeeding survey, viz. 12th June, year foresaid.

Excise-office, Edinburgh, 29th Dec. 1813. } (signed) *W. Wintour*, Diary Clerk.