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IN THE HOUSE OF LORDS.

C A S E

OF THE

DISTILLERS OF CORN SPIRITS

IN NORTH BRITAIN.

THE 4th article of the Treaty of Union between England and Scotland declares, "That all subjects of the United Kingdom of Great Britain, shall have *full freedom and inter-
course of trade* and navigation, to and from any port, or place, within the United Kingdom, and the dominions and plantations thereunto belonging; and that there be communication of all other rights, *privileges, and advantages*, which do, or may belong to the subjects of either Kingdom."

Article 18th provides, "That the laws concerning the regulations of *trade, customs, and such excises* to which Scotland is, by virtue of the Treaty, to be liable, be the same in Scotland as in England."

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In the year 1784, The draught of a Bill was prepared, chiefly under the direction of the Malt Distillers of London, whereby Scotland was, so far as regards the matter of Distillery, to be disunited from England, the duties paid in Scotland were to be withdrawn from the management of the Scotch Board of Excise, and like Brandy from France, and Geneva from Holland, to be entered and paid for at the English ports. The transit of goods from Scotland to London was, by this Bill, to have been loaded with so many difficulties, penalties, and forfeitures, as amounted to an absolute prohibition. The Scottish traders opposed this intended Bill. They published and dispersed a Case to the Members of the Legislature, exhibiting the partiality, injustice, and impolicy of its enactments, in a light so strong, that the scheme was dropped. A general Distillery Bill passed that year, for both parts of the United Kingdom, containing many enactments, evidently pointed against the trade of the North.

In the year 1783, the Scottish Board of Excise, in their Report to the Committee of Enquiry, had suggested, "That
 "an adequate duty, in lieu of all the duties, should be imposed by way of licence, to be paid annually for every
 "still, according to its size, at a fixed rate per gallon, which
 "would be certainly ascertained, would be easily levied, and
 "with difficulty evaded; while it would save to the revenue the expence of many officers, and relieve the licensed
 "traders of every restriction of which they complain."

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From that time the scheme of a licence duty continued to be spoken of with approbation.

The Distillers of London, consisting of a few Houses, have, for many years, by means of large capitals, and methods of management common to the engrossers of trade, secured to themselves a monopoly, as they themselves set forth, of eleven-twelfths of the Distillery of England.

Holland employs some hundreds of Distilleries, and in Scotland, at this moment, 200 great and small are working.

This monopoly is of vast advantage to individuals, though detrimental to the trade of the Kingdom, and hurtful to the land-owners, as it vests in a few men the exclusive regulation of the prices of corn. It is not, therefore, to be wondered at, that the possessors should bend all their attention, power, and influence, to repress any invasion upon a trade, to which long possession had, in their minds, created the idea of a right.

The Monopolists of London, therefore, impressed it upon Government, and upon the Public, that the Distillers of the North could not hold their ground, or appear in the market of the capital, by any other means but those of evading the duties of law.

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To this it was answered, that the benefit of their trade arose not so much from the profit upon Spirits, as from the advantages the Manufacturers reaped from the combining agriculture with distillation, by feeding great quantities of large cattle, and improving waste low-rented grounds, with the manure afforded from the Distillery, (in London thrown into the river) by the cheapness of their fuel, and low rate of wages to their workmen.

In order to convince the Distillers of London of the mistake, an offer was made to work with them upon any terms of equality, that could be decided. They declared themselves to be satisfied, either to continue upon the mode of excise as then established, or that the duties should be altered to that of a licence upon the stills.

This proposal was universally rejected by the Manufacturers of London.

The Scotch Distillers next suggested, that *one half* of the duties should be levied by the existing mode of excise, and the *other half by licence*, in order to diminish the temptation on either side, of evading the duties, by payment of one-half thereof according to a certain rule.

This was also peremptorily rejected.

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The Distillers of Scotland suggested another method, viz. That the duties should be raised upon the prime material, *the corn* itself, from which the spirit was extracted. But this seemed to be equally disagreeable to the London Distillers as the former.

The proposition these Gentlemen seemed to listen to, was, that of a Licence Duty for Scotland, at a low rate, and an Equalizing Duty upon the spirits when landed in England. By this means the Scotch were to be fixed down, First, to a duty upon their stills in Scotland, and to another upon every gallon landed in England, neither of which could possibly be evaded.

An agreement was ultimately concluded, and a minute of it subscribed in these terms: "In presence of Sir *William Cunningham*, Bart. *Henry Beaufoy*, Esq. *Philip Mitcalfe*, Esq. Messrs. *Payne* and *Smith*, on behalf of the London Distillers, proposed, That the Equalizing Duties to be paid upon Corn Spirits distilled in Scotland, upon licenced stills, at twenty shillings per gallon, *per annum*, on the contents, shall, upon their importation into England, not exceed the sum of one shilling and ten-pence, at the strength of one to ten over hydrometer proof; and in proportion, if the strength is more or less."

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" Mr. *James Haig*, for himself, and Mr. *Atchison*, on behalf of himself and several Scotch Distillers, agree to pay *one shilling and nine-pence* per gallon.

" The difference of *the penny* to be referred to the House of Commons, in case the parties do not agree with respect to this difference."

This agreement was concluded too late in the Session of Parliament, 1785, to be at that time attempted to be carried into execution.

Next year, 1786, the Licence scheme was renewed by the parties, upon the footing of the agreement before engrossed. After various meetings, and a canvass of every circumstance, the offers on each side came to within *three-halfpence* of each other, which *three-halfpence* was referred to the Right Honourable the Chancellor of the Exchequer. And, at an audience, in which the chief traders concerned were present, the Chancellor of the Exchequer was pleased to add one penny to the sum ~~demanded~~^{offered} by the ~~London~~^{Scotch} Distillers, after which the Licence Bill passed into the law now existing.

The declared purposes upon the part of Government, in this measure, were, *First*, to make a trial in Scotland of the effects and consequences of the much talked of scheme of levying the duties according to the capacities of the stills; and

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and next, by lowering the price of spirits in Scotland, and freeing the traders from the restraints of Excise, to give them an opportunity of repressing the illicit trade of Foreign spirits, and occupying the market of their country.

The object last mentioned was recommended to the principal Distillers of Scotland, from high authority, and they set about the attainment of it, with all the assiduity, industry, and attention, they were masters of.

Geneva, the manufacture of Holland, is the spirit which, for near a century past, has chiefly distressed the home manufacturers in Scotland; the taste and peculiar flavour, by long habit, having become agreeable to the palates of the people.

The Distiller was aware that he had a kind of national prejudice to combat, which could not be done by the lowness of price alone. It behoved him to become master of the secrets of Dutch distillation, and to produce a spirit of the same quality and flavour.

To attain this purpose, no labour, no expences were spared. Distillers were brought from Holland; large additional works were erected, and great capitals embarked, and at last the object was happily obtained: a spirit was produced of British manufacture, of such exact resemblance in quality

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quality with that of Holland, that the best judges were unable to discern one from the other. Seizures of parcels were made, by the most knowing Officers of Excise, as *Holland Gin* illegally imported, and proof brought upon trial of the goods being British manufacture.

The Distillers now flattered themselves with successfully fulfilling the views of Government, and in reaping the well earned advantages of their labour, industry, and expence.

They met with a fatal disappointment. Under the expectation of a warm support from every member of Government, they little expected to have their hopes overthrown, and their scheme entirely quashed by the Board of Excise in Scotland. So it was, that certain orders had been issued by that Board, whereby permits were refused for the sale of the spirits after they were manufactured. These orders, and the practice consequent upon them, were as contrary to law, as they were against good policy, and the purposes for which the Licence Act was chiefly intended. But there was no appeal or immediate remedy. The Foreign spirits had the advantage of permits, and consequently of a general sale; every attempt to meet them in the market was defeated.

Deprived, in this manner, of the possession of the home market, the Manufacturers were obliged to give over the attempt,

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tempt, to take down the stills and the buildings they had prepared, and once more to employ their works in making spirits for the market of London, the only market left open to them.

The Distillers of the Capital, who, by fixing the Equalizing Duty so high, had, it seems, expected it to operate as a prohibition; finding themselves disappointed, presented a Petition in December last, to the Honourable the House of Commons, stating, that the Licence Act "was intended "to impose upon the Distillery of Scotland duties equivalent to those paid by the Distillery of England, and that "the Equalizing Duties imposed by the said Act, were settled under the influence of misrepresentation;" and therefore praying that a further Equalizing Duty be imposed.

The Distillers of Scotland presented a Petition to the House, praying to be heard by Counsel, and to be allowed to give evidence on their part.

The evidence of both sides was heard at the Bar of that Honourable House, and a Bill brought in, reciting the Acts for regulating the Distillery in both Kingdoms; and also reciting, "That it is found by experience, that the said Duties are not equivalent, and that it is expedient to impose "an additional Duty on British spirits manufactured in Scotland,

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“land, and brought from thence into any other part of the
 “United Kingdom, on or before the 5th day of July, 1788.”
 And therefore enacting, “That there shall be levied and
 “paid for every gallon of British spirits, of the strength
 “there mentioned, which shall be manufactured in Scot-
 “land, and brought from thence into any other part of the
 “United Kingdom, from and after the passing of the said
 “Act, and on or before the 5th day of July, 1788, an ad-
 “ditional Duty of Six-pence per gallon, to be paid by the
 “importer thereof, before the landing thereof.”

This Bill, notwithstanding all the opposition made to it
 upon the part of the traders, importers of the spirits, thus
 over and above taxed, has passed the House of Commons.

The persons aggrieved have therefore no resource but
 in the great wisdom, justice, and equity of this most Ho-
 nourable House; and they hope for leave humbly to re-
 present

OBJECTIONS to the PRINCIPLE of the BILL.

THE Licence Act was declared to be an experimental
 law, calculated for the attainment of two objects: *First*,
 The exclusion of Foreign spirits from the market of Scot-
 land; and *next*, to gain an exact knowledge of the conse-
 quences and effects of levying the Duties on the capacities
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of the stills. The Distillers of Scotland left nothing un-
 done, on their part, to attain the first of these purposes;
 they placed a great part of their capitals on the success, and
 were disappointed in the manner already stated: they laid
 their situation in an humble Memorial before the Lords of
 his Majesty's Treasury, and being without redress, were
 obliged to abandon the undertaking.

As to the other matter, Government has attained the
 knowledge of the business wanted, but it has been at
 the charges of private traders, who were at the expence of
 new modelling their works, and making great alterations
 for the new plan of manufacture held out to them by the Act.

Laws of experiment are of limited endurance; but the
 parties concerned have hitherto, in every case, enjoyed the
 term prescribed. The duration of the Licence Act was *two*
years, which do not expire till the 5th July next; and it was
 in dependence upon the existence of the law during that
 term, that the traders in Scotland were induced to accept of
 it, expend their time, and venture their money. Parli-
 ament did not, as in the late Experimental Act for farming
 the Post-horse Duty, reserve a power of resumption at any
 time during the term. No such power was reserved in the
 Licence Act. One year elapsed, new licences were taken
 out for the present year, and thereby the persons licensed
 are bound to work, and to pay the duties to the 5th of July
 next.

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The Bill now objected to, proposes to break in upon the short remainder of the two years, to alter the terms of the Act of Parliament, and to load the trade from the North with a fifth-part of additional duties.

Whether or not there be a precedent in the records of Legislation for an Act so very strong, the concerned presume not to say; but if any such ever existed, they apprehend they may venture to affirm, that it must have proceeded either upon the consent, or at least the acquiescence of those whose interests were affected.

The purpose held out in the present Case, is to equalize the duties payable by the Distillers of South and North Britain.

The Manufacturers of Scotland, in no part of the business, ever pretended to inequality; they were content to be subjected to the same laws and mode of Excise with the traders of London. They offered to work under a general licence; to divide the duties between the licence and excise; to pay by the quantity of corn: in short, to agree to any common measure, whereby equality might be established between every man of the trade.

By the additional duties of the present Bill, the London Distillers have attained an inequality, unsupportable by those

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those of the North, and that during the term in which the latter had no reason to expect any such alteration; therefore, the utmost length the House of Commons could have gone, was to *repeal the law presumed to be erroneous*, and to have placed the Distillers of Scotland upon the same ground from which they were taken by the Licence Act.

By the Union of the Kingdoms, no such Act could have passed against the consent of the parties who were the objects of it; and therefore, it is humbly submitted to this most Honourable House, if the terms which induced that consent, can be altered before the expiration of the term, upon which all concerned firmly relied.

The parties aggrieved, prayed the Honourable House of Commons to repeal the Licence Act immediately, and to put them upon the same footing with those who had complained so loud of an inequality. But their application was refused.

They next prayed to have, at least, the lamentable remedy of giving over their trade, of renouncing their licences, for the four months to come, and of being liberated from payment of the duties to Government, for goods they cannot sell, but with inevitable ruin. Even this was rejected.

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The Petition of the London Distillers before stated, gave a beginning to the measures complained of, under a pretence that the Act proceeded *upon misrepresentation*. By that expression it appeared afterwards, they meant the number of times which the stills under licence could be run: yet the evidence given by one of the trade, at the Bar of the House of Commons, declared that they were aware of the utmost that could be done by this means, and if they had not, a full opportunity was given them by the year that intervened, betwixt the date of the first agreement and the passing of the Licence Act.

The object in view bears no proportion to the strong and extraordinary measures which are necessary to attain it. *Four months* of the twenty-four being of little consequence but to the traders themselves, whose arrangements were made, corn and cattle purchased, contracts entered into, and servants hired in dependence, upon the expiration of a term, of which they are now, by a sudden and singular interference of the Legislature, to be deprived. The revenue cannot be benefited by this alteration, because no part of the duty complained of can be paid; and it operates as a Prohibition against the Scots, and a Bounty to the English Distillers, at the most favourable season of the whole year for working.

The evil tendency of this Bill must be evident, from the following fact: Four years ago, a Bill under the
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direction of the London Distillers, was proposed to be introduced into Parliament, enacting, That Spirits made in Scotland, for England, should pay no duties in Scotland, but should pay the whole at landing in England. The duty to be paid then was in the exact proportion of what is now to be charged in England, *without any Licence Duty*. Therefore, that Bill which was so strenuously opposed, and prevented from being passed into a law, was so much *better* than the *present*, by all the *Licence Duty now paid in Scotland*.

The parties aggrieved are now to lay before this most Honourable House,

O B J E C T I O N S

To the mode of calculation, by which the additional duty is charged against them.

By the Statutes for regulating the Distillery in England, the duties are laid at *six-pence* a gallon upon the *Wash*. It is provided, that twenty gallons of spirits be allowed, by the Officers who survey the works, for every hundred gallons of wash; so that the duty under the Act of Parliament is 2s. 6d. per gallon on the spirit. The Distillers of London say, that though 20 gallons be got for a part of the year, and sometimes more, yet, in contradiction to the Act of Parliament, they say, that the average quantity, for the time they work, is only 18 gallons; consequently,

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quently, they pretended that the duty is 2s. 10d.--The Scotch, on the other hand, say, that in striking an Equalizing Duty, the *law*, and not the *pretences* of interested parties, is to be solely attended to. The adjusting of the quantity of spirits made from 100 gallons of wash, was, as above observed, no new matter; it was settled in the former Distillery law, in 1784, when both Countries were on the same footing; and neither of them complained then of that allowance being too high.

That the first intended Bill for imposing duties upon spirits from Scotland at importation, preserved the proportion of twenty gallons to the hundred, and meant to impose an Equalizing Duty accordingly.

That the agreement in 1785, for the Licence and Equalizing Duties, which preceded the present Act for near a twelve-month, was founded upon the same proportion.

That the present Equalizing Duty was also struck upon the same *data*, in 1786, the Distillers of Scotland never having admitted the truth of the story told about this matter by those of London.

If the latter do not draw twenty gallons fairly, they ought not to take credit for that amount. If they can draw it, it acts as a premium to their ingenuity; and if they do not draw it, it is a certain method of securing two gallons got by any other means.

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To propose that the Scotch traders should pay the duty upon the spirits at the rate of eighteen gallons, is to establish an evident inequality. It would be, to deprive them of every chance, and every advantage enjoyed by others in the same trade; and it would go to deprive them of one of the few advantages of their northern climate, and also of the benefit of two gallons which they can actually draw.

It was admitted by the evidence at the Bar of the House of Commons, that twenty gallons and upwards, were to be got at a particular season of the year, and *the present is the very season referred to*; besides, this season lasts longer in Scotland than in the South, by reason of the colder temperature of the air. But from the advantage thence arising, the traders are by the Bill to be excluded.

The Distillers of London may stop their work at any time. They may take advantage of seasons, by giving over when the influence of them ceases; and in fact they do stop for several months in the year. The Distillers of Scotland, on the contrary, are obliged to work, and pay duties from *one end of the year to the other*, without intermission. The operation is therefore altogether different. It is impossible to judge between the parties, by any other rule, than the rule which the law has established, viz. *one-fifth* of Spirits to the *hundred* of Wash.

When the following considerations are taken into the account, the Scotch Distillers consider themselves as paying considerably above what those of London *pretend* to pay.

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The calculation proceeds upon the supposition of the stills being run at the rate of four times each twenty-four hours. But satisfactory evidence was brought to the Bar of the House of Commons, that the forcing them in that manner, is attended with a heavy expence of spoiling the utensils, burning the spirits, and damaging them in quality; and consequently, they must be sold considerably below the market price. The stills cannot be worked in future, without being attended with the same losses and disadvantages. The Distillers are to be bound to the mode of working, without any allowance upon these accounts.

The calculation is affected by another error, taken (it is supposed) upon the assertion of the London Distillers. The Low-Wine stills are held to be *one-fourth* of the Wash stills; whereas, they are in fact from *two-fifths* to the half. The Wash stills are supposed to be charged five-sixths, including the head, whereas they are only *three-fourths*.

Besides, the Equalizing Duties are paid on Spirits, at importation, by the gauge; but the stocks of the London Distillers are permitted by weight, which makes a difference to the Scotch Distiller of seven-twelfths of a penny per gallon, above the two shillings of Equalizing Duty.

It was proved at the Bar of the House of Commons, that the Wash used for making *Gin* was about five times weaker than the

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the common London Wash: yet the spirit from this weak Wash is charged at the same rate of duty. The Licence Duty upon *Gin* is from one shilling and two-pence to one and four-pence per gallon. If the proposed Equalizing Duty be added, then it behoved the Scotch Maker of *Gin* to pay three and eight-pence or three and ten-pence, in place of the two and sixpence paid by the London Distillers, upon their corn spirits.

From the whole premises it is demonstrated, that there is no method to do justice to the parties, but to replace them both where they formerly stood, under the same general law, and under the same mode and practice of Excise. The advantages which the Distillers in London enjoy, are many and various, independent of duties. They occupy the spot of the market, which renders it impossible to check the amount or extent of their operations. Whereas the quantities of spirits sent to London from distant works are always ascertained in the transit.---Had the London Distillers been put under the Licence Act---had they contrived to run their stills twice as often as the Scotch, it would have been impossible for the latter to have ascertained the quantities made---to have complained to Parliament, or to have substantiated a difference of duty, however great that difference might in reality have been.

For all these reasons, it is humbly hoped, that a Bill of the tendency above stated, ruinous to a part of the subjects of Great Britain, ought not to pass into a Law.

N. B.

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N. B. THE principal evidence who appeared at the Bar of the House of Commons, who spoke to the quantity of spirits drawn by the Distillers of London, was Mr. Joseph Benwell, a partner in the house of Mark, Bell, and Company, who declared, that the Licence Duty, which was intended to have been 10d. per gallon; (which added to the Equalizing Duty paid, makes 2s. 10d. per gallon) is reduced to one penny per gallon, supposing the Wash to be of the strength generally made; "but as they may contend they "make their Wash weaker, and that it of course does not produce the same quantity of spirit---if the produce is only half "what is usually drawn, in that case the Licence Duty does not "exceed two-pence. This, of course, leaves them an advantage "of eight-pence per gallon."

When interrogated what he paid of duty per gallon on spirits distilled by him, he answered, above 2s. 9d. per gallon. And being further interrogated how he paid 2s. 9d. per gallon—Answered in the following words: "I take the amount of Duty chargeable "on the Wash I have distilled, and which Duty I have paid—and "take the number of gallons of Spirits produced from that Wash, "and I find it amounts to about 2s. 9d. per gallon of legal Spirit."

The Scotch Distillers moved for an account from the Excise, of the quantity of Spirits made by the six Distilling Houses of London, from the 1st of August, 1786, to the 25th of June, 1787.

A Report was made to the House of Commons at the very time in which the Bill passed (but happened not to be adverted to)—that the quantities of Wash distilled from the 1st of August, 1786,

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to the 25th of June, 1787, by Messrs. Mark, Bell, and Company, of which the aforesaid Joseph Benwell is a partner, amounted to 1,591,525 gallons of Wash, which quantity of Wash produced 303,280 gallons of Spirits, which was 19 $\frac{1}{2}$ gallons of spirits, for every 100 gallons of Wash; consequently, the said Mark, Bell, Joseph Benwell and Company, even according to the Report of the Excise, and even supposing them to have taken no advantage whatever of their credit, was no more than 2s. 7 $\frac{1}{2}$ d.

The Bill, therefore, which has passed the House of Commons, has proceeded upon the evidence of a party interested against the evidence of his own Stock-Book, kept by the Officers of the Public, and imposed a difference of near two-pence against the Distillery of Scotland, and according to the evidence brought by the Scots Distillers, of 4 $\frac{3}{4}$ d. more than is confessedly paid by the witness, a Distiller of London.

This error alone, the parties aggrieved humbly apprehend, is sufficient cause for the Bill being rejected.

Mr. Joseph Benwell being also interrogated in these terms, "When you calculate that you pay 2s. 9d. per gallon, do you estimate that 100 gallons of Wash produce 20 gallons of Spirits?"

"I certainly do not; if I did, the duty would be but 2s. 6d."

"Do you mean to state it as an impossibility to draw 20 gallons of Spirits from 100 gallons of Wash?"

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"By no means?"

"Is it not frequently done?" "It certainly is."

"Is not more Spirits drawn sometimes from 100 gallons of
"wash?"

"I will not pretend to say that there are not times when more
"is drawn, but they are very rare."