

dence, arising from the circumstances of the transaction itself. The respondent contends that the facility of the granter is not sufficiently made out, but, on a fair and impartial view of the import of the conflicting testimonies in this case, the weight of evidence is due to the appellant's witnesses, because they seem to be those who were better acquainted with his habits of life, and had more opportunities of judging of his capacity or incapacity. The signature too adhibited to the deed in question, which varies in its appearance and mode of spelling at the bottom of every page, is a circumstance of real evidence which leads to the same conclusion.

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Pleaded for the Respondent.—The respondent is a *bona fide* purchaser from Robert Thomson, and the reasons of reduction are only personal to him. 2. Even as against Robert Thomson, the grounds of reduction have, not only *not* been established, but have been completely disproved.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be affirmed.

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

For Respondent, *Sir J. Scott.*

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Writ of Error.

MESSRS. EASTON, FRAZER, and Co., Licensed Distillers at the Bridge of Don, in the County of Aberdeen,	}	<i>Plaintiffs in Error;</i>
GEORGE BROWN and Others, Commissioners of Excise for Scotland,	}	<i>Defendants in Error.</i>

House of Lords, 3d April 1798.

DISTILLERY LAWS—DRAWBACK—WORKING ON SUNDAYS ILLEGAL.

—In a claim made by distillers in Scotland for a drawback on duty allowed for spirits distilled for exportation to England. Held, that by the words of the acts allowing the abatement “for every day” the still should work, did not include Sunday, though the distillers worked the stills on Sabbaths, it being a profanation of the laws with regard to the Sabbath, which hold it illegal to work on that day, and therefore that they could not claim a drawback on the duty for spirits made and distilled on that day.

This was a claim made by the plaintiffs in the Court of Exchequer for certain drawbacks under the distillery acts,

1798. for having manufactured spirits in conformity to the acts and distillery laws, applicable to spirits made in Scotland for export to England. They stated that they continued for 243 days to work their stills in the manufacture of spirits for export to the English market; and, under the exemption contained in the acts of duty for spirits so made and exported, they were entitled to the drawback as applicable to 4284 gallons manufactured during those 243 days. The defendants objected to the demand, on the ground, that by a sound construction of the acts, the plaintiffs were not entitled to draw back more than a proportional abatement of the duty paid, that is, to receive, by way of drawback, a greater sum than what they had paid, and further, and in particular, no such abatement could be allowed for spirits manufactured and stills worked on *Sundays*—the abatement being applicable only to every lawful day such stills shall continue to work.

On trial before a jury, the jurors returned a special verdict, finding, that if the Court shall be of opinion that the plaintiffs were entitled to a drawback for working their still for every day, including Sundays, then they find the plaintiffs entitled to their demand; but if the Court shall be of opinion that they are not entitled to charge for every day including Sundays, then the jurors find for the defendants.

Dec. 1, 1795. The cause came on to be argued on the special verdict; and the Court of Exchequer unanimously gave judgment for the defendants.

Against this judgment the present writ of error was brought.

Pleaded for the Plaintiffs.—1. When the words of a statute are clear and unambiguous, there is no room for inquiring into the meaning or intention of the legislature in framing the statute. By the 33d Geo. III. c. 61, it is enacted, that for *every day* during which any licensed still shall be used in making spirits from British materials, the owner thereof shall receive an allowance of two-tenths on every gallon of the cubical contents of each still so used. The term “every day” can admit of but one meaning, and includes *Sundays* as well as any other day of the week. If the legislature intended not to give any abatement of the license duty for the Sundays on which the stills were used, that clause of the statute would have been differently worded. The legislature knew, that in all great distilleries at least, the stills were worked on *Sundays* as well as any other day of the week, and officers of Excise attended the works on *Sunday*, opened the sealed locks, the keys of which were in their

own custody, saw the stills charged, discharged, took an account of the spirits made, saw them put into the cellars, under their own *locks and keys*, and new locked and sealed the fastenings of the stills, in every way as on week days, without any objection whatever. The legislature would therefore have taken care to have expressed the act so as to have afforded *no* ground for demanding an abatement on account of stills being wrought on Sundays, if there was any intention of refusing the abatement upon account of work done upon *Sundays*. 2. But supposing it was unlawful to use stills for distillation upon *Sundays*, and that *Sundays* are not included in the general term "every day," the plaintiffs are still entitled to a part claimed. The number of Sundays in the period of 243 days was 34, which, being deducted, leaves 209 days for which they are entitled to abatement.

Pleaded for the Defendants.—1. The intention of the legislature, by the distillery laws referred to, was to place the duty on the manufacture of spirits both in England and Scotland on the same footing; and the abatements given to Scotch distillers for spirits made for the English market was solely allowed on this principle of reciprocity, and hence called the equalizing system. But here the plaintiffs make a most extravagant demand. The words of the act of Parliament are "abatement or allowance." These words evidently mean a sum subtracted from a greater sum, leaving a balance still due; but the abatement or allowance claimed by the plaintiffs far exceeds the duty they have paid. If a person owes £25,000 of duty, it is perfectly intelligible to say, that he is entitled to £20,000; but if a man owes £20,000 only, and asks to be allowed an abatement of £25,000, this is plainly absurd. This is exactly the case here. 2. Though the acts of Parliament only give the "abatement or allowance for every day which the stills shall work," they can be only understood to mean every *lawful* day which the stills shall work. In Scotland particularly, there are many strict and anxious laws with regard to the violation of the Sabbath. These have never been repealed, and not by the statutes in question; nor is it agreeable to the just construction of laws, to hold that one law repeals another merely by implication, unless the existence of the one is absolutely inconsistent with the existence of the other; but that is not the case in the present instance, because the acts in question may be justly interpreted in exact conformity with the other existing laws of the country against the profanation of the Sabbath, and that merely by supposing

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that the acts of Parliament in question, by the phrase, "abatement or allowance for every day which the stills shall work," meant every day which they shall work, *in conformity with the existing laws*, which is certainly to be presumed in all cases. Suppose a tradesman hires a journeyman for three or four months, at the rate of 2s. a day, would the journeyman be entitled, at the end of that period, to claim his wages for the *Sundays*? Certainly not! The answer would be obvious. That the master had hired him only for those days in which it was lawful to work. The case is exactly the same here, the Parliament must be presumed to have intended to give the abatement to the distillers only for those days on which it is lawful for them to work. The plaintiffs say it was customary for them to work on *Sundays*, and the officers of Excise may have been in the custom to survey on those days; but the answer is, that although it be not *lawful* to work on *Sundays*, yet, in point of fact, persons *may*, and certainly *can* and *do* work on *Sundays*; but they are subject to the penalties enacted by law against the profanation of the Sabbath. It is said that the legislature, when it meant to exclude *Sundays*, did so expressly, by using the words, "every lawful day," or "every day, *Sundays excepted*," and the plaintiffs have quoted acts where these words appear. But the answer is twofold; 1. Such anxious expressions in one or two acts cannot prove that the legislature in every other case meant to repeal the laws with regard to the profanation of the Sabbath. 2. In the acts quoted, the legislature was speaking of certain *acta solemnia*, and other proceedings which were to take place *de die in diem*, and where too the legislature had given no power of adjournment to the Court or other officer concerned, and therefore it was absolutely necessary specially to exclude *Sundays*. 3. It has been stated that if the plaintiffs' demand were sustained, they will draw back a greater sum than they paid in name of duty; in other words, they would receive a positive bounty; and yet the legislature has not provided any fund out of which such bounty falls to be paid. While it is clear, that if the distiller receives back more than he has paid in duty, he actually is paid a *bounty*. It will also be found that the abatement of $7\frac{2}{10}$ d. per gallon cannot be made to correspond with the amount of the license duty, without deducting *Sundays*. The calculation of the abatement of $7\frac{2}{10}$ d. per gallon per diem corresponds exactly with the annual license duty of £9 per gallon on the contents of the still, on the supposition of the still working 300 days

in the year. This leaves 65 vacant days; 52 of these are Sundays; 13 still remain: and the plaintiffs asked in triumph, how these were to be accounted for? but the answer was obvious. The stills required cleaning, and these 13 days are a necessary allowance for cleaning and repairing the stills. Such was the meaning of the legislature, and such has been the case in other acts; as, for example, the duties on soap, where the 13 days are allowed for cleaning.

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After hearing counsel, it was

Ordered and adjudged, that the judgment given in the Court of Exchequer in Scotland be, and the same is hereby affirmed. And that the record be remitted, to the end, that such proceeding may be had thereupon as if no such Writ of Error had been brought into this House.

For the Plaintiffs, *Henry Erskine, Wm. Adam, James Montgomery, Wm. Dundas.*

For the Defendants, *Sir J. Scott, R. Dundas, John Mitford, Charles Hope.*

NOTE.—This case does not appear to be reported in any collection. The statutes against the profanation of the Sabbath are:—1503, c. 83; 1579, c. 70 1592, c. 124; 1593, c. 163; 1594, c. 201; 1661, c. 18; 1663, c. 19; 1672, c. 22; 1695, c. 13; 1696, c. 31; and 1701, c. 11.

ADAM SMITH, and Others, Creditors of LIEUT.	} <i>Appellants;</i>
JOHN NEWLANDS,	
JOHN NEWLANDS, Eldest lawful Son of the	} <i>Respondents.</i>
said Lieut. John Newlands, and DAVID	
M'LAREN, Writer in Edinburgh,	

House of Lords, 26th April 1798.

LIFERENT AND FEE.—Deeds were conceived by the granter, conveying heritable estates to his natural son “in liferent, for his life—rent use only, (in another deed for his liferent use allenary,) and to the heirs lawfully to be procreated of his body in fee.” Held, in a question with creditors, that the substantial fee was in the children, and not in the father.

Alexander Newlands had no heirs but a natural son; and, of this date, he executed a disposition, whereby he conveyed and disposed a house in Edinburgh, “to and in favour of June 10, 1771.