

No 72.

The Judges who were against the interlocutor maintained the following proposition, That it is the privilege of freemen only to work within the burgh; and that all others are excluded from this privilege. This proposition is evidently untenable: For it was never doubted that any man may work for the use of himself and family. He may bake, brew, make shoes, gloves, wearing clothes, &c. for this end, as well as for presents to his friends. Tenant, No 65. p. 1934. was, by this Court, found entitled to brew, bake, kill oxen and sheep for the use of his inn. Hence it clearly appears, that the monopoly which craftsmen enjoy is singly that of vending their manufactures within the town.

*Sel. Dec. No 121. p. 172.*

1757. February 18.

CORPORATION of HAMMERMEN in Glasgow, *against* JAMES DUNLOP, and Others, Merchants there.

No 73.

Notwithstanding the exclusive privileges of corporations, merchants, are entitled, by entering into copartnership with particular freemen, and employing their own stock, to furnish themselves with goods for exportation.

THE blacksmiths, saddlers, and others professing the hammermen trade in Glasgow, were erected into an incorporation, by seal of cause, in 1536, with exclusive privileges; and, among others, that none shall set up a booth to work in the burgh till he be made a freeman, and undergo a trial; and this incorporation has immemorially exercised this privilege.

James Dunlop, and others, merchants in Glasgow, entered into copartnership, proposing, upon their own stock and credit, to carry on the manufactory of making saddles, principally for exportation. They assumed as partners three persons who were freemen of the incorporation; and they set up shop in their name.

The incorporation brought an action against them, *concluding*, That the *three saddlers* should be discharged *to pack and peel with unfreemen*, and the *merchants* prohibited to *work* in the business appropriated to the incorporation.

*Pleaded* for the defenders, *imo*, The three persons in whose name this manufactory is carried on, are freemen of the incorporation, and therefore entitled to carry on this trade; nor is the incorporation entitled to enquire who are their copartners in it, or by what stock or credit they are enabled to carry it on.

*2do*, The exclusive privileges competent to incorporations in royal burghs, do not entitle them to exclude merchant burgesses, freemen of these burghs, and as such by law entitled to the privilege of foreign trade, from manufacturing by themselves, or others, such commodities as they have occasion to export to foreign parts. They can only prohibit the making saddles, &c. for sale within the burgh. And in support of this, it was further *argued*, That every inhabitant could import from London, or elsewhere, in the course of foreign trade, even for sale within burgh, however prejudicial it may be to the interests of these incorporations: That every innkeeper may bake, brew, or slaughter meat for the use

of his inn by his own servants, though both he and they be unfreemen. So was found in the case of Tenant, No 65. p. 1934. And, upon the same principles, a merchant fitting out a ship for a foreign voyage, may bake bread for victualling her, as he only bakes in order to carry on a foreign trade, to which he is entitled, exclusive of that incorporation of bakers. In like manner, the merchant, who has a right to export goods to foreign markets, has a right to provide himself with these in the most beneficial way; in the same manner as one exporting a parcel of suits of clothes, is under no necessity of employing the incorporation of taylors to make them.

The argument chiefly insisted on for the incorporation, That none but freemen can work within burgh, is attended with absurdities, and many inconveniencies. According to it, no gentleman within burgh could employ his own servant to shave him, or to drive a nail within his own house. A freeman mason is employed to build a house; he cannot employ unfreemen as labourers, to do the drudgery. This has never been imagined. Universal practice has shown, that the privilege of these incorporations cannot be carried so great a length; and therefore this general proposition, That none but freemen can work within burgh, falls to the ground. Besides, the matter now in dispute received a solemn determination, very lately, in the case of the Coopers of Perth, where it was found, that merchants were entitled to employ their own servants, though unfreemen, to make barrels, which were necessary for packing salmon for exportation, No 68. p. 1938.

*Answered* for the Incorporation: To the *first*, It is not competent to freemen to cover the goods of unfreemen, by entering into copartneries, and carrying on the trade of the incorporation, with the effects, and for the profit and behoof of these unfree partners, who had no title to deal in the trade. This is against the principles upon which incorporations are established; it is contrary to the oath taken by the freemen of this and every other incorporation at their admission, That they shall not *pack or peel with unfreemen, nor cover unfreemens goods*; and if it is allowed, it will resolve into a total extinction of the privileges of incorporations.

To the *second*, By every charter or seal of cause, and particularly by those granted to this incorporation, the craft has the exclusive right of carrying on their trade within burgh; and immemorial usage has confirmed these charters; and this is now become a part of the ~~consuetudinary~~ *consuetudinary* law of this country, which cannot be altered. Artificers living without burgh, are at full liberty to work to the inhabitants, and to bring in their work, and expose it to open sale on market-days: Therefore, if incorporations cannot hinder unfreemen to work within burgh, they can hinder nothing; there is an end to all their privileges, and they must bear the burdens laid on incorporations, without reaping any benefit from them. If merchants may employ any number of unfreemen, upon pretence of supplying their foreign trade, it will be an easy transition to send their goods to market, and it will be next to impossible to detect them. When a number of unfreemen keep open shops in town, carrying on extensive manu-

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factories, how is it possible to discover, whether the goods brought to market are made by them or by freemen? or whether the inhabitants bespeak what they want from the one or the other, when they live together in the same town, with their houses adjoining to one another? This would disappoint the undisputed rights of an incorporation; and it is much the same, whether a privilege be directly abolished, or reduced to such circumstances as that it cannot be maintained.

The right to foreign trade is a vain pretence for this encroachment. Nothing can be more different than the profit which a merchant is to make by foreign trade, and the profit the artificer makes from his work, and the dexterity he has attained in it.

Every subject has a natural right to make any manufacture that is necessary for his own use; but it does not follow, that he may employ unfreemen for that purpose; or that a merchant may make for exportation.

The case of the Coopers of Perth does not apply. There the fishing company was allowed to make barrels by their own servants for transporting their fish; for the same reason, that a merchant would be allowed to put up his goods in boxes, or in packs, or wrappers, without sending for the wrights to nail them, or the tailors to sew them. These were considered as incidents to foreign trade, but are very different from a whole manufacture, which is here sought to be engrossed. The case of Tenant is rather on this side of the argument: The Court allowed him to make malt for the ale and spirits consumed in his house; but they found he could not make malt to be distilled into spirits, and sold in gross abroad.

'THE LORDS found, That the defenders, as merchants, may make saddles and horse-furniture for their own exportation; but found, That they cannot make saddles and horse-furniture by their foremen, although entered freemen in the incorporation, for sale in the town of Glasgow.'

Act. *A. Pringle, Ferguson.* Alt. *Lockhart.* Clerk, *Home.*  
*Walter Stewart.* Fol. Dic. v. 3. p. 107. Fac. Col. No 14. p. 23.

N. B. A similar judgment was given between the Cordiners of Glasgow and the same defenders. (*Supra.*)

No 74.  
 The exclusive privilege of importation, belonging to royal burghs, relates only to foreign commodities; and goods brought

1757. December 16. JOHN SMITH against The GUILDRY of INVERNESS.

JOHN SMITH having imported goods to a considerable value, from London, at the harbour of Inverness, it was challenged by the guildry, as an encroachment on the privilege of the royal burghs; and it was insisted, That the goods were escheated, in terms of the acts of Parliament 1672 and 1690, in favour of the royal burghs. And accordingly the goods were seized, and confiscated.