

The conclusion for the costs of the former suit, *qua* costs, was held clearly to be incompetent.

1777. *March 8.* MESSRS MURDOCH, WARRACH, and COMPANY *against* NATHANIEL CHIVERS.

A COMPANY at Glasgow, who had set up a manufactory of porter, apprehending that there were some secrets in the trade, which they could learn only from a London brewer, applied to Nathaniel Chivers, one of that number, to come and teach them his art, for which they engaged to give him a reward of 100 guineas, besides expense of journey, &c. ; but upon this express condition that he should not communicate it to any of the other brewers in the city or neighbourhood of Glasgow. He came accordingly,—taught them his art,—received his reward,—and staid with them several months; after which he set up a brewing of porter in Glasgow for his own account, using the brewing looms and servants of one Struthers, a common brewer in Glasgow. The porter company complained of this as a breach of bargain and good faith: they insisted that it was both against the spirit and letter of the agreement, and particularly, they insisted that it was impossible for Chivers to carry on this trade without communicating his art to Struthers' servants, whom he used in his operations. This last he totally denied, and insisted, that though he used Struthers' servants as servants, yet he communicated to them nothing of his secrets, and that he had *bona fide* fulfilled his engagement with the Porter Company, having taught them his art, and at the same time communicated that art to no other person. It was true he now brewed for himself,—this was not against their contract,—and if he was not allowed to do this he behoved to starve. The Company however applied to the Sheriff of Lanarkshire for an interdict; which was granted, 18th November 1776, first prohibiting him to communicate his art; and next, as a consequence thereof, prohibiting him to brew in the city or neighbourhood of Glasgow. Of this Chivers having presented a suspension, the bill was passed by Lord Kaimes, 21st February 1777; and, upon a reclaiming petition and answers, the Lords, 8th March 1777, adhered.

1776. *August .* STEWART *against* SOUTER.

FOR the sake of police, it is understood that the Magistrates of a royal burgh have power to erect workmen, in a particular way, into small societies with exclusive privileges. This is the case of the chairmen and porters in the city of Edinburgh. The consequence is, that no person can carry a chair, except an entered chairman; nor any man act as a porter, except an entered porter. But, on account of the multiplicity of porter business in the city at the term of Whitsunday, the term of flitting and carrying furniture, it has been usual for the inhabitants to employ chairmen to carry their furniture. At the

same time it has been usual for the Magistrates to publish an annual order, "discharging all guard soldiers, chairmen, and others, not entered with the society of porters, or being burgesses of the city, from carrying furniture at the term of Whitsunday, unless they pay twenty-pence into the porters' box for the use of the poor." Accordingly, having issued this order at Whitsunday 1776, the legality of it was contested by certain chairmen; and they, being pursued before the Magistrates, and decreet pronounced against them, presented a bill of suspension of the decreet, which was refused by Lord Covington. And, upon bill and answers, the Lords adhered.

The Lords went upon reasons of police, immemorial usage, and the power of Magistrates.

NOBILE OFFICIUM.

THE case of Lord Monzle and Others, trustees appointed by Mr Campbell, minister at Weem, collected by Lord Kilkerran, p. 518, is a famous case, where the Court, *ex nobili officio*, interposed to prevent a settlement on trustees being evacuated by the death and failure of the quorum. See Principles of Equity, p. 53. This was a settlement for public pious uses. They did the same where the trustees refused to accept, with regard to a sum of money mortified by Mr Gilbert Ramsay to the corporation of New Aberdeen, to be applied for burses to students of divinity in the College. This appears from the papers in the case of Campbell. And the Magistrates having refused to accept, the Lords appointed Sir Alexander Ramsay, to whom the defunct had given the presentation of the bursars, to manage and administrate the mortified sum, and name factors for uplifting the annualrents and apply them in terms of the will.

In Lady Cunningham's case, the two Trustees, Sir John Cunningham and Lady Dalrymple refused to accept, 22d January 1758. The settlement was irrational, and all concerned wished to have it away. The Lords were called by the settlement, on failure of the trustees. A challenge was brought in support of the deed, and, though only a mock-fight, the Lords, by their first interlocutor, found that the settlement had not fallen. But, on a reclaiming bill, they altered, and found that it had fallen.

See Principles of Equity, p. 54; also the case *Campbells* against *Campbell*, mentioned Principles of Equity, p. 55 and 122.

They seem to make a distinction between deeds for private and for public uses.