

APPENDIX.

PART I.

BURGH-ROYAL.

1776. *December 4.* JOHN CROOKS, &c. against ANDREW TURNBULL, &c.

THE incorporation of Weavers in the burgh of Rutherglen obtained a seal of cause, or letter of deaconry, from the Magistrates and Town Council, in the year 1641. This letter of deaconry contained several regulations with regard to apprentices, and the qualifications of admission as freemen.

The deacon and masters of craft had also a power of making all other acts and statutes concerning the good government of the craft.

In consequence of the act entitling soldiers to set up and work as freemen in any royal-burgh, great numbers of weavers, under the name of king's freemen, flocked to Rutherglen, so that the old members, (as these new freemen took journeymen and apprentices themselves) could not get, as they alleged, an apprentice to serve them; and no person being admitted a freeman in the regular way for sometime, the funds, in consequence of this, began to decay.

It was thought proper, accordingly, in 1758, to rescind some of the old regulations, in the letter of deaconry, with respect both to the time of service, and the dues of admission. A number of freemen were entered, and journeymen and apprentices received, in consequence of these new regulations.

Afterward an action of reduction of the admission of certain of these freemen was brought, and which concluded for having the original regulations established by the letter of deaconry declared.

The Lord Covington Ordinary pronounced the following interlocutor:—
“ The Lord Ordinary having advised the condescendence for the pursuers,
“ answers for the defenders, replies and duplies, as also the act of Council

No. I.

Powers of Magistrates and Council, relative to the seals of cause of incorporations.

See No. 113.
p. 2007.

No. 1. “ 1641, containing the letter of deaconry in favour of the incorporation of
 “ Weavers, and extracts of certain acts and ordinances by a committee of said
 “ incorporation, reported to and approved by a meeting of said incorporation so
 “ late as the year 1758, but which has not hitherto received the sanction and
 “ approbation of an act of council, authorising the alterations in the constitu-
 “ tion of this incorporation, as established by the letter of deaconry, as also the
 “ other writings, protests, &c. produced and referred to by both parties, Finds,
 “ That as the regulations established by the letter of deaconry respecting the
 “ qualification and admission of the freemen of said incorporation, are thereby
 “ declared and ordained to be invariably observed in all time coming, these re-
 “ gulations remain at this day in full force binding and obligatory upon all the
 “ members of said incorporation, and which could not be rescinded or altered
 “ by any act of the incorporation itself, without the consent and authority of
 “ the Magistrates and Council, the granters of said letter of deaconry.”—And
 then the interlocutor proceeds to find, that the admission of certain freemen
 sought to be reduced was void and null, as being disconform to said regulations.

His Lordship having afterward adhered to this interlocutor, it was

Pleaded for the defenders, in a reclaiming petition :

Acts of the Legislature itself may go into disuse, and the very contrary of po-
 sitive enactments of statute may become law by usage. Upon the same princi-
 ples; the set of a burgh may undergo changes and alterations from usage.
 Such is undoubtedly the case of several burghs in Scotland. Supposing,
 therefore, that the regulations 1758 had not been made, a general usage, ac-
 quiesced in by the incorporation for a number of years, could not be called in
 question as contrary to the original seal of cause. Much more must this be
 the case, when the practice has proceeded from an unanimous act of the incor-
 poration itself.

The acts of the incorporation must be binding upon the incorporation itself, by
 whom they were unanimously established. In a proper action for that purpose,
 this Court might bring back matters to their original footing, as established by
 the letter of deaconry, but the Court surely would not think itself at liberty
 to set aside admissions in time past, which were made in terms of the act of the
 incorporation itself, and acquiesced in for a course of years by all parties con-
 cerned. No reduction has been brought of the regulations themselves, but
 only of the admissions in virtue of the regulations. Till, however, this is done,
 the pursuers can have no right to insist for a reduction of the acts of admission,
 because the defenders, when admitted, were possessed of every qualification
 which the standing rules and acts of the incorporation required. The pursuers
 cannot be allowed to call in question proceedings which took place while the re-
 gulations remained unchallenged.

In the *second* place, the regulations of 1758 did in no respect require the ra-
 tification of the Council. In matters which are of indifference to the burgh
 in general, and in which the corporation or the individual members thereof are

alone interested, it is competent to make new acts and regulations, even different from those that were laid down in the letters of deaconry by which the corporation was constituted. The number of apprentices which a master could take, the term of service, the sums to be paid by apprentices and journeymen, or for the admission of freemen, had no sort of connection with the political constitution of the borough; and the regulations regarding them might therefore be altered by the mere act of the corporation. Besides, by the very letter of deaconry, the corporation have a power of making bye-laws. Indeed this power, though not expressed, is implied in the erection of every incorporation. Nothing can more properly fall under the inherent powers of the corporation than the regulating the admission of its own members. If any abuse be committed, it may be in the power of the Magistrates and Council to correct such abuse upon a proper application to them for that purpose; but their sanction is by no means necessary to render such regulations effectual.

In the answers for the pursuers, the chief thing founded upon was, that the acts of admission under reduction were equally contrary to the regulations founded upon by the defenders as to the letter of deaconry itself.

The Court, however, pronounced the following interlocutor: "Find that the letter of deaconry 1641 could not be rescinded or altered by any act of the corporation, without the consent and authority of the magistrates and council, and in so far adhere to the Lord Ordinary's interlocutors, and refuse this petition, and remit to the Ordinary to proceed accordingly, and to hear parties farther on the particular objections stated against the petitioners, and on any other points in the cause, and to do as he shall seem just."

A reclaiming petition against this interlocutor was refused without answers.

Lord Ordinary, *Covington.*

Act. *Morthland.*

Alt. *M^cQueen.*

J. W.

1776. *December 13.*

WILLIAM FOTHRINGHAM, &c. against ANDREW LANGLANDS, &c.

WILLIAM FOTHRINGHAM and *Colin Smith* brought a reduction of the election of *Andrew Langlands* and *Robert Craw*, as deacon and treasurer of the *Hammermen of Brechin*, at *Michaelmas 1774*, upon the ground that they themselves were at that time respectively elected deacon and treasurer of the said corporation, and also an action of declarator of their own election as deacon and treasurer. Their summons, besides, concluded to have it found and declared "that those who had been admitted freemen of any of the six incorporations of the town of *Brechin*, and more particularly of the incorporation of *hammerman*, whether *handycraftsmen* of said incorporation or not, are en-

No. 2.

Power of a burgh to alter its usages.

No. 13. p. 1861.