

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The Court, however, pronounced the following interlocutor: "Find that the letter of deaconry 1641 could not be rescinded or altered by any act of the corporation, without the consent and authority of the magistrates and council, and in so far adhere to the Lord Ordinary's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.

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No. 2. "titled to all the rights and priviledges of any of the other members of said
"incorporations, and particularly to a voice in the election of the office bearers
"of said incorporations."

The Lord Kennet, before whom this process came as Ordinary, pronounced
10th February 1776, the following interlocutor "Having considered the memo-
"rial for the pursuers, together with the memorial for the defenders, and proof
"adduced by the pursuers, sustains the defences pleaded for the defenders,
"assoilzies them from his process of declarator, and decerns, and finds expenses
"due to neither party,"

"In a reclaiming petition it was argued for the pursuers, that by the set and con-
stitution of the burgh of Brechin, there are six incorporations of trades, viz.
weavers, hammermen, taylors, shoemakers, glovers, and bakers. That each
of these bodies do annually elect a deacon and treasurer, and that the dea-
cons are *ex officio* members of the town council. That a man may be a mem-
ber or freeman of different incorporations, and may elect, or be elected into
office, although not an actual handycraftsman, or though not bred to or prac-
tising the particular craft or trade which gives name to the incorporation. And
that farther, every man, be his trade or occupation what it may, is entitled, if
he be the son of a freeman, or if he marry the daughter of a freeman, to be
received and to act in all respects as a member of the incorporation, to which
his father or father-in-law belonged, at least if he reside and bear burdens with-
in the burgh.

No charters or seals of cause by which these corporations were erected, are
now extant. The immemorial usage and practice of the trades, joined with
acts or regulations of the particular incorporations, are the foundations of this
practice.

The practice itself is sufficiently established by the proof led in the present cause.

Thus it appeared that a *slater* and a *butcher* were members of the incorpor-
ation of *glovers*; that a *schoolmaster* had been *deacon* of that incorporation; that a
fishmonger was a member of the incorporation of *hammermen*; that a *weaver*,
a *shoemaker*, a *wright*, and a *carter*, were members of the incorporation of
bakers; that the *carter*, had been a deacon of that trade; and that a *writer*,
was a member of the incorporation of *taylors*. An act indeed had been passed by
the corporation of hammermen, of date the 17th October 1739, declaring
that no person should be admitted freemen to the smith trade, unless he was an
actual tradesmen. But this act proves that the anterior practice was to admit
persons who were not actual handycraftsmen. The act also was only meant to af-
fect the votes of such unhandycraftsmen as should be *thereafter* admitted, with-
out depriving of their vote those who had been admitted already. Nor besides
was it intended to affect such as were entitled to their freedom by being the
sons or sons-in-law of freemen, and who accordingly continued to enjoy their
full privileges notwithstanding the act. Supposing even the intention of the

act to have been otherways, still it was not in the power of a few craftsmen who happened at the time to be members of this corporation, to alter its very constitution; at least it was not in their power to deprive of their privileges freemen already admitted, or to preclude the sons or sons-in-law of freemen from being afterward admitted, such persons having a right thereto *de jure*, and not one dependent on the will and pleasure of the corporation. At any rate, the successors of the members of 1739, were possessed of as ample powers as their predecessors, and that act is repealed and rescinded by an act of the incorporation dated 2d November 1770.

It was also urged, that however singular this usage might appear, it was very beneficial to the incorporation. Their charity funds were thereby greatly increased, without an equivalent increase of the numbers of their poor; as none but persons in easy circumstances ever think of paying for admission into a corporation, when they do not exercise its proper trade or craft. Without such a practice, besides, the corporations in this little town would be in danger of becoming extinct altogether.

For the defenders it was argued, that the act 1739 does not appear to have been in disuse, or tacitly repealed by a contrary practice.—The proof brought by the pursuers themselves resolves chiefly into an attempt to prove a kind of general practice in the other incorporated trades of admitting unhandycraftsmen, but by no means establishes that any such practice took place in the incorporation of hammermen, till within these few years past.

It is not to be denied, with regard to the act 1770, that a corporation has power to alter former regulations, regarding its own police, provided such alterations are not inconsistent with the general law of the country, or adverse to the particular constitution of the corporation, and provided such alterations be made in a regular and proper manner. But that a salutary regulation, such as that of 1739, excluding unhandycraftsmen from the privilege of voting at elections, can be repealed by a meeting of such unhandycraftsmen themselves, whom it was meant to exclude, is altogether impossible. And yet from the proof it appears, that the act 1770 was brought about in this manner.

It was observed from the Bench, that practices of this kind would wholly overturn the nature of corporations, and the Court accordingly (13th December 1776,) pronounced an interlocutor, “Adhering to the judgment of the Lord “Ordinary.”

Lord Ordinary, *Kennet.* Act. *Rae.* Alt. *Wright*

J. W.

1777. *March.*

INCORPORATION of TAYLORS in GLASGOW, against HUGH M'KECHNIE and Others.

HUGH M'KECHNIE and Christopher Jaes being married to the daughters of soldiers, began to carry on trade as taylors in the Town of Glasgow.—An action

No. 2.

No. 3.

Whether the statute 3d, Geo. III.