1777. *August* 6. INCORPORATION of TAILORS in CANONGATE *against* ANDREW MILROY.

COMMUNITY—REGISTRATION.

A by-law enacted by a Corporation must be recorded in their books before it can be binding upon the Members.

THE pursuers enacted a regulation or by-law, imposing a penalty of 40s. sterling, *toties quoties*, upon every master who should pay his journeymen more than a shilling a-day. The Magistrates of Canongate interponed their authority to this regulation; but it appeared that no entry had been made of it in the books of the corporation. The defender having broken through this regulation, an action was raised against him before the Sheriff of Edinburgh, concluding for payment of the penalties. The Sheriff decerned against him. The defender brought a suspension; and besides maintaining that the Magistrates had no power to regulate such matters, he PLEADED, That regulations of this kind made by corporations are ineffectual, unless they are intimated; and that the only proper mode of intimation is by entry in the corporation's books.

ANSWERED,—That the regulation was made in the most formal manner, and, besides having the authority of the Magistrates interponed to it, was lodged with the clerk of the incorporation, where every member had an opportunity of seeing it. The defender, in point of fact, was acquainted with it, and cannot plead ignorance.

The Court waived consideration of the other points, and decided the case upon the want of registration.

The following opinions were delivered:

COVINGTON. I doubt as to the power of the magistrates to declare any person liable in forehand penalties: the penalties provided by the Court, in the case of a future contravention of rules for salmon-fishing, were provided *ex nobili officio*; and even *there* the right to do so was much doubted at the time, though it has since been confirmed by a judgment of the House of Lords.

PRESIDENT. I have great doubts as to the power of the baron-bailie in making such regulations. In such matters the Justices of the Peace are the proper judges.

BRAXFIELD. I do not think that the baron-bailie has any such power; but my doubt is here,—that there is a corporation; and that the parties are bound to the rules of the society.

JUSTICE-CLERK. Here is an incorporation, which implies a power to make by-laws.

PRESIDENT. The cause can only stand upon the footing of a by-law. But if this regulation is not recorded in the books of the incorporation, how comes it to bind any individual?

COVINGTON. The act, if properly past, is binding; but it is necessary that it be inserted in the books. Private knowledge is not sufficient.

GARDENSTON. In matters of penalties I am for proceeding on clear legal ground: there must be promulgation in order to bind.

On the 6th August 1777, "The Lords, in respect that the regulations were not recorded, suspended the letters *simpliciter*;" altering Lord Kennet's interlocutor.

Act. H. Erskine. *Alt.* G. Ferguson.

1778. *January* 15. JOSEPH KNIGHT, a Negro, *against* JOHN WEDDERBURN, Esq.

SLAVE.

State of a Negro brought into this country from the Plantations.

[*Faculty Collection, VIII.* 5; *Dictionary*, 14,545.]

HAILES. I had a preliminary doubt in this cause, which is not altogether removed, viz. what evidence is there that Captain Knight acquired this unhappy negro by any *modus acquirendi dominii* known in African jurisprudence; and what evidence is there that Mr Wedderburn acquired him from Captain Knight. To say that he is a slave, because he is a black, and the property of Mr Wedderburn, because in the possession of Mr Wedderburn, is too hasty logic.

In what I am to say on the cause itself I shall use the famous opinion of Talbot and Yorke as my text in general. I agree with the opinion of those great lawyers, unless in one particular, where I see a statute against it, not an English but a Scottish statute; and thus their opinion may be perfectly just with respect to the law which they had in their eye, although it may not be altogether applicable to our law, which they had not in their eye:—

"We are of opinion that a slave, by coming from the West Indies, either with or without his master, to Great Britain or Ireland, doth not become free; and that his master's *property* or *right* in him is not thereby determined or varied."

Here I agree in opinion; because a right acquired is not lost, nor a contract made, in any degree invalidated through the change of the residence of the parties acquiring or contracting; yet a change of place may have the effect of suspending the exercise of the right. Thus, to illustrate my proposition by a familiar example:—Vows, in the Romish church, considered as a contract, are rather more solemn things than any bargain about a negro boy between a Captain in the African trade and a West Indian planter. If a Spanish monk should come to this country, either for his health by permission, or clandestinely for his pleasure, his superior would not be heard in our Courts, should he attempt to *reclaim* him; and yet I know no law with us which prohibits a Spaniard from