

infringe on the rights of corporations. But, from these exceptions to the general law, it surely will not follow that a burghess, by merely keeping his work-shop without the town's precinct, may exercise the occupations peculiar to the members of the incorporated trades, which would at once reduce the established rights of these communities to the insignificant advantage of having a workshop within the burgh. The case of Aberdour was a singular one; the trade of a hammerman, which he was entitled to pursue, being so interwoven with that of a coppersmith, that a distinction was impracticable.

THE LORD ORDINARY repelled the defences; and to this judgment the Lords adhered, upon advising a reclaiming petition for William Dowie, with answers for the Bakers.

Lord Ordinary, *Brasfield*. Act. *Ro. Sinclair*. Alt. *Little*. Clerk, *Home*.
Craigie. *Fol. Dic. v. 3. p. 108.* *Fac. Cól. No. 133. p. 209.*

1790. May 27.

JOHN REID, and Others, *against* The UNITED INCORPORATIONS OF MARY'S CHAPEL.

THE wrights and masons in the town of Edinburgh, are a branch of the United Incorporations of Mary's Chapel. They have seals of cause from the magistrates, in which they are directed to admit strangers taking up their residence in the town, on their undergoing a trial, and paying the dues of entry.

It had been usual in these corporations, to admit the apprentices and children of the entered members on easier terms than other persons. The sum paid by the latter, till about the year 1770, was only L. 11; it was afterwards raised to L. 21, and at last in 1787 to L. 100.

It had been also the custom in these corporations, to give to individuals a permission to follow the profession of a wright or mason for life, on paying a smaller sum than was demanded for a regular entry; but those licentiates were not admitted to any of the other privileges of the corporations, neither being maintained at the expence of the community while in indigent circumstances, nor entitled to interpose in the administration of their funds. The composition demanded from them was in 1787 increased to L. 40.

The legality of these proceedings was tried in mutual actions brought by the managers of the corporations on the one hand, and by John Reid and others, who were not members of the corporations, on the other.

The first question was, whether the corporations could be compelled to admit persons who had not served an apprenticeship within the burgh; but the regulation above referred to, respecting the admission of strangers, prevented a decision of this on general principles.

The Lords made regulations respecting the entry of freemen with the incorporations of Mary's Chapel, and the dues to be paid on their admission, and on that of licentiates admitted by the incorporations, reducing the dues of entry upon both.

No 91.

The next question regarded the powers of the corporations in regulating the dues of entry. And here the opinion of the Judges was agreeable to the determination of the Court in the case of Aberdeen, 21st July 1786, (*infra* Sec. 6. *b. t.*) by which it was found, that the fine or composition paid by intrant burghesses might be proportioned to the benefits to be derived from a participation of the trade. In the circumstances, however, which here occurred, the sum demanded by the corporations being thought exorbitant, was reduced to L. 50.

A third question agitated in the papers, was the power of corporations to admit licentiates. Many of the Judges expressed a doubt, how far this practice was justifiable. But the Court was prevented from giving any determination on this point; the judgment of the Lord Ordinary, finding that the corporations might enter into such a compromise, having been acquiesced in by the parties; but the sum demanded on this account was reduced to L. 30.

The interlocutor of the Lord Ordinary was in these terms:

‘ Finds, that the Incorporations united under the name of Mary’s Chapel, have a right to carry on their different crafts within the ancient royalty of Edinburgh, and to exclude all others who are not entered in the said corporations from exercising the crafts within the said boundaries; finds the said incorporations of wrights and masons, by their original seals of cause, subsequent practice, and admissions in the course of this process, are bound to receive strangers; that is, (when applied in contradistinction to freemen wrights and masons), such persons as have not served apprenticeships to masters, freemen of said incorporations, for six years, and who have acted as journeymen for two years more, are entitled to be admitted as freemen of said incorporations, and entitled to all the benefits and privileges thereof, upon giving sufficient proof of their skill in their respective trades they profess, and upon payment of a certain sum; finds, upon the grounds foresaid, that the said incorporations of wrights and masons, are also bound to admit such strangers to the liberty of exercising their crafts within the said royalty, during their lives, without any other privileges or benefits, upon payment of a certain sum; finds, that the sum demanded by the said incorporations, for a full enjoyment of all the liberties, privileges, and benefits, attending the respective freedoms of the said incorporations, is reasonably and properly stated at L. 100; finds, that the sum L. 40, demanded for the liberty only of carrying on the trade of the said crafts during life, is too high, and therefore modifies the same to L. 30 Sterling.’

After advising a reclaiming petition for John Reid and others, which was followed with answers in behalf of the Corporations,

THE LORDS ‘ found that the petitioners are legally entitled to be admitted freemen of the incorporations of Mary’s Chapel, upon being sufficiently capable and qualified in their several trades, and on payment of L. 50 as entry-money.’

Reclaiming petitions were preferred against this judgment; the one in behalf of the Corporations, complaining of the restriction as to the dues of entry, and

the other for John Reid, &c. praying that the dues of entry should be restricted to L. 33 : 6 : 8, or to some smaller sum than L. 50. Both these petitions were refused without answers.

Lord Ordinary, *Henderland.* Act. *Wight, Sir William Miller, John Clerk.* Alt. *M. Ross.*
Clerk, *Sinclair.*

Craigie.

Fol. Dic. v. 3. p. 108. Fac. Col. No 133. p. 261.

1793. May 28.

The INCORPORATED TRADES of Aberdeen, *against* The MAGISTRATES, COUNCIL, and GUILDRY, of said City.

SEVERAL questions having arisen between the Guildry of Aberdeen and the Incorporated Trades, about their respective privileges, the latter brought an action of declarator, which contained, *inter alia*, the two following conclusions :

1mo, ' That the freemen of the incorporated trades, or tradesmen burgesses of Aberdeen, present and to come, are entitled and at liberty to carry on within said burgh their several and respective trades, crafts, and manufactures, and to import the materials of the same, and to export the produce thereof.'

2do, ' That they are entitled to deal in, buy, and import all native commodities, goods or wares whatever, without exception, whether the produce of that part of Great Britain called Scotland, or that part thereof called England, or of the dominions, colonies, plantations, and dependencies, belonging to our Crown, or which hereafter may belong to the same.'

In support of the first conclusion, the pursuers

Pleaded : Originally all burgesses of royal burghs were equally entitled to carry on trade, whether foreign or inland, and craftsmen might even have been members of the Guild or Merchant Company, *L. L. Burg. cap. 99. 120. 137. 138. and 139. Statuta Gildæ, cap. 25. et passim. Iter Camerarii, cap. 21. § 2.* In England the privileges of trade were also conferred of old on the whole citizens. Brady, Appendix, p. 26. ; Burrows, p. 1322, *Racks versus Chamberlain* of London. Even in the year 1284, guilds in Scotland had acquired few exclusive privileges, *Stat. Gild. cap. 20.* : indeed, in those early periods of society, few persons could live solely by merchandise.

By 1457, c. 67. and 1466, c. 13. both of which are now in desuetude, it is ordained, that no person shall deal in merchandise without a certain stock. And the statute 1466, c. 12. contained a general enactment, prohibiting the members of the crafts from dealing in merchandise ; Sir George Mackenzie (vol. i. p. 198.), however, understands this law to relate only to foreign trade, and is of opinion, that the act 1661, c. 47. was merely intended as a renewal of it. Now, this last mentioned statute ' discharges all tradesmen and mechanics to import from foreign parts any *made work* belonging to that trade or calling

No 91.

No 92.

Members of the Incorporated Trades are entitled to import the materials of their several trades, and to export the produce thereof ; but they have no right to deal as merchants in the native commodities of England, nor to import from that country made goods of those kinds which they manufacture.