

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.

No 92. ' whereof they are freemen, or to vend the same, or any such ware brought ' home by merchants in their ships, or otherwise.' From which it is evident, that the members of the crafts were still at liberty to import the raw materials of their respective trades.

The act 1672, c. 5. limits the exclusive privileges of freemen of royal burghs, even in foreign trade, to the importation of certain articles, and ' declares it law- ' ful to any of his Majesty's subjects to export all the native commodities of the ' kingdom;' and also, ' that it shall be leisome to the burghs of regality and ' barony, by any of their burgesses or members of society, to export all their ' own proper manufacture, or such goods as shall be bought by them in fairs or ' markets; and that it shall be leisome to the saids burghs of regality or barony, ' or societies erected or to be erected for manufacturies, and all others exporting ' the native growth of the kingdom, as aforesaid, to import in return of the said ' goods exported, or of the fraught and hyre of the ships, the goods and com- ' modities following, viz. timber, iron, tar, soap, lint-seed, hemp-seed, hemp, ' onions, or other necessaries for tillage or building for the use of their foresaid ' manufactures.'

And, by the statutes 1690, c. 12. and 1698, c. 19. the privileges of home and foreign trade, so far as thereby conferred on royal burghs, are clearly understood to belong to every freeman bearing scot and lot, whether he be a craftsman or guild-brother.

The demand of the pursuers is not opposed by the authority of any writer on the law of Scotland; and the only decision which has any connection with the subject is strongly in its favour; 8th July 1752, Corporation of Coopers of Perth against Keir and Company, No 68. p. 1938.

2do, That the pursuers are entitled to deal in the native commodities of Scotland is expressly declared by the statutes 1672, 1690, and 1698; and by the 4th article of the Union between Scotland and England, every person who had formerly a right of carrying on domestic trade in either country, obtained the same privilege in both; 16th December 1757, Smith against the Guildry of Inverness, No 74. p. 1952.

In point of expediency there can be no doubt, that both the present claims are well founded, as every restraint on domestic trade is detrimental to the prosperity of a mercantile country.

*Answered*: Many of the privileges granted to royal burghs, and particularly those relative to trade, were meant to be confined to the brethren of the guild. Craftsmen are limited to manufacturing the different articles of their trade, and selling them within the burgh, L. B. cap. 29. 53. 137. 13. 14. 15. 7. 61. 55. 18. 22. and 139.; *Reg. Mij. lib.* 2. c. 41.; *Stat. Gul.* 35. 36. and 37.

The privileges of trade were further confirmed to guild burgesses by 1457, c. 67.; and 1466, c. 11. And the act 1466, c. 12. ratified by 1487, c. 107. expressly prohibits craftsmen not only from dealing in foreign merchandise, but in

all merchandise whatsoever. These acts are still in observance, and have been enforced in various instances; Bankton, vol. i. p. 57.; Fountainhall, 8th January 1697, Guildry of Stirling, No 57. p. 1916.; 3d January 1711, Dean of Guild of Aberdeen, No 59. p. 1919.; 26th January 1743, Hog against Flockhart, No 62. p. 1926.

The acts 1672, 1690, and 1698, were introduced with no view to destroy the known distinctions between the guildry and the crafts, but merely to extend to burghs of regality and barony, those privileges to which royal burghs had formerly an exclusive right.

*2do*, Supposing it were true, that, prior to the Union, the pursuers had a right to deal in native commodities, it would by no means follow, that they are now entitled to trade to England. For, by the 21st article of the treaty of Union, it is provided, 'That the rights and privileges of the royal burghs of Scotland as they now are, do remain entire after the Union, and notwithstanding thereof.' Accordingly, in a case, No 88. p. 1972. Earl of Aboyne and others against the City of Edinburgh, it was found, that English ale and porter imported into Edinburgh are liable to the impost-duty, which, by a grant of Charles II. is payable to that city upon *foreign* beer and ale.

This is a question of right into which considerations of expediency cannot be allowed to enter. At the same time, it may be observed, that were the pursuers to be allowed to import the whole raw materials used in their manufactures, they would engross the greater part of the foreign trade, as these comprehend by far the most valuable foreign commodities imported in this country.

THE LORD ORDINARY reported the cause on informations.

*Observed* on the Bench: A tradesman ought to have unlimited freedom in providing his materials, and selling the produce of his manufacture, but he has no right otherwise to exercise the trade of a merchant. The articles of Union were not intended to affect the interest of private parties.

The unanimous judgment of the Court was as follows: 'Find that the pursuers are entitled to import the materials of their respective trades, crafts, and manufactures, and to export the produce thereof; and decern and declare accordingly: Find, in regard to the conclusions of the libel as to foreign timber and salt, that the decreet-arbitral \* must be the rule betwixt the parties; and remit to the Lord Ordinary to ascertain what is the use and wont respecting foreign timber, referred to in the said decree-arbitral; remit also to his Lordship to hear parties procurators further upon the conclusion of the declarator respecting shore-dues, &c. and assoilzie the defenders from the other conclusions of the libel.'

Both parties reclaimed against this interlocutor. The reclaiming petition for the defenders, praying that the crafts should be prohibited from importing the

\* This decreet-arbitral was pronounced in 1587, on a submission between the Guildry and the Crafts, and afterwards ratified by Parliament.

No 92. materials, and exporting the produce of their labour, was refused without answers.

The petition for the crafts was ordered to be answered. In this paper they prayed, That if they had no right to trade in all the native commodities of the united kingdoms, they should at least be allowed to import made work from England, of the kinds which they were entitled to manufacture. Without this power, they alleged that they could not have a proper assortment of the articles necessary for their several trades. And they now, for the first time, *contended*, that the act 1661, prohibiting the importation of made work, was in desuetude. To establish this, they offered to undertake a proof, that by the uniform and immemorial practice, not only of Aberdeen, but of all the other burghs in Scotland, craftsmen have constantly imported, without dispute, such articles of made work as fell within the proper business of their several crafts.

On advising this petition, with answers, it was

*Observed* on the Bench: The act 1661 stands unrepealed, and a statute which introduces a general regulation that may still be enforced, consistently with the situation and manners of the country, cannot go into desuetude. The object of the pursuers is to be merchants in their own trades, while they enjoy exclusive privileges as manufacturers.

The COURT accordingly, on this point, 'adhered to the interlocutor reclaimed against, and refused the desire of the petition.'

Lord Ordinary, *Eskgrove*.

Act. *Maconochie, M. Ross.*  
Clerk, *Sinclair*.

Alt. Solicitor-General, *Burnet*.

*R. Davidson*.

*Fol. Dic. v. 3. p. 108. Fac. Col. No 56. p. 119.*

See APPENDIX.

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## SECT. VI.

### Powers, Duties, and Jurisdiction of Magistrates.

No 93.  
The privilege of arresting strangers, regards merchant-furnishings, and no other kind of debt.

1609. November 29. EDWARD KINCAID *against* LAIRD OF KINCAID.

THE LORDS will advocate an action, pursued by a burghess of Edinburgh against a country gentleman, before the Provost and Bailies of Edinburgh, notwithstanding of caution found to answer as law will, if the cause be not founded upon a merchant trock, or furnishing, but upon a promise of broker-fee for helping to sell land, or such conditions of the like nature.

*Fol. Dic. v. 1. p. 119. Haddington, MS. No 1660.*