

1803. February 10.

PATERSON, *against* The DEACON and BOXMASTERS of the Corporation of SKINNERS of EDINBURGH.

Isobel Paterson, the widow of James Simpson, a member of the Corporation of Skinners in Edinburgh, after her husband's death, in the year 1794, made an application to the trade, stating her destitute condition, and requesting the allowance usually given to persons in her situation. She was accordingly added to the list of widows who received an aliment from the Corporation.

This annuity was paid for about three years, when some unfavourable reports with respect to the widow being stated at a meeting of the Corporation, a committee was appointed to inquire into the matter, and to report whether she was a proper object of charity. This committee (21st October 1797) reported, "That the various articles of charge alleged against her were too well founded; and the house taking into their consideration said report, they un-animously ordered her name to be struck out of the pension-list, which was done accordingly."

Upon this, she brought an action against the Corporation, for payment of the sum of £5 yearly, while she continued a widow; and the Lord Ordinary found, "That the defenders are not entitled arbitrarily, and at their own pleasure, to recall the pension formerly allotted by them to the pursuer."

The Corporation presented a petition to the Court against this interlocutor; and

Pleaded: There is nothing in the law of Scotland, which makes the maintenance of widows a natural obligation incumbent upon every corporate body; and there is nothing in the regulations of this particular craft which lays them under such an obligation. They have frequently, indeed, been accustomed to allow small sums to those of their members who had fallen into distressed circumstances, as well as to their widows and children. But this bounty has always been considered as discretionary, nor was it ever demanded as a right. Accordingly, they have been in use to increase or diminish the pensions upon their list, according to the exigency of the times, or the circumstances of the case; and they have occasionally struck pensioners off the roll altogether. The determinations of the managers in such matters have never been disputed. In this case, from particular circumstances, they have judged fit to withdraw their charity, and they cannot be compelled to renew it as a Corporation any more than as individuals.

Answered: The maintenance of their poor is a duty incumbent upon every corporation, and one of the chief purposes for which trades were incorporated. The Skinners, accordingly, like other corporations, have been in use to maintain their poor; and there is no precedent of a widow, in the circumstances of the pursuer, having her pension withdrawn. The funds of the trade consist

No. 6.

A corporation possesses a discretionary power of withdrawing the aliment granted from their funds to the widows of freemen.

No. 6. not altogether of dues paid by entrants, but of donations made from time to time by charitable persons, which must be considered as an eleemosynary fund, affording a just claim to the widow of every freeman in destitute circumstances; Finlay against Newbigging, January 15, 1793, No. 115. p. 2009. At least, although the pursuer might not have been able to make effectual a claim against the Corporation to be put upon their pension list; yet having been allowed to remain for a considerable time upon it, her claim resolves itself into an exception against the annuity being withdrawn, which must require something farther to justify it than the mere opinion of the managers.

The Court altered the interlocutor of the Lord Ordinary, and assoilzied the defenders.

Several of the Judges seemed to think, that the pursuer had a legal claim to such a provision out of the funds of the Corporation, as was usually allowed to widows of freemen in her circumstances, or at least that the trade were not entitled to withdraw the pension without instructing the allegations which were made against her, and shewing that she was not a fit object of charity, more especially as part of the funds consisted of donations expressly devoted to such purposes. But the majority of the Court held, that these matters should be left entirely with the Corporation, to be regulated by them according to principles of sound discretion; that they had better opportunities of being acquainted with the circumstances of each case than the Court could have; and that, if actions of this sort were to be sustained, the profits of a fund destined for charitable purposes might be often expended in unprofitable litigation.

Lord Ordinary, *Glenlee.* Act. *Corbet.* Agent. *J. Orr.* Alt. *W. Erskine.*
Agent, *R. Hotchkiss, W. S.* Clerk, *Pringle.*

J.

Fac. Coll. No. 83. p. 185.

1803. May 19. TURNER against VANNER and Others.

No. 7.

The aliment allowed to a widow until the term when her provisions become payable, restricted to the sum provided by a contract of separation, which had been entered

By a contract of marriage, entered into between James Lauder of Whitslade, and Helen Elizabeth Turner, an annuity of £250 was provided to her, “ in full of all she could any way be entitled to or claim as terce or locality of lands, half or third of moveables, or any other manner of way, *jure relictae*, by and through the predecease of the said James Lauder, her apparent husband.” This annuity was to be paid half-yearly, and the first payment was to be made at the term of Whitsunday or Martinmas after her husband’s death, for the half-year following. A few months after the solemnization of their marriage, a contract of separation was entered into, in which “ the said James Lauder binds and obliges himself to make payment to the said Mrs. Elizabeth Helen