No. 17. which does not exist, shall be requisite to form a legal meeting; it can only be a majority of those who in reality compose the corporation, and have it in their power to act; otherwise it would follow, that if by death or resignation, the number was reduced below its original majority, the burgh would be disfranchised. In the present case, this singular consequence would follow, that if the nine separating members had appeared, as they ought to have done, upon the 28th, the nine who did attend, one of whom being entitled to preside, and to have the casting vote, would have had a majority in their favour; but that by separating from the others, they annul what was done at a meeting, which, had the whole attended, would have just decided in the same way. Were this objection sustained, in no case whatever, where the members of a corporation are equally divided, would the party not entitled to the casting vote ever allow themselves to be outvoted, as they need only withdraw, and prevent the remaining members from forming a legal meeting.

The Lords "found, (5th March 1805,) That there was not a majority of "councillors present to constitute a legal meeting of council;" which was adhered to, (28th May 1805) by refusing a reclaiming petition, without answers.

For the Complainers, *H. Erskine, J. Clerk.* Agent, *D. Spottiswoode, W. S.*
Alt *Solicitor General Blair, Burnet, Boyle.* Agent, *Ja. Horne, W. S.*
Clerk, *Pringle.*

F. *Fac. Coll. No.* 210. *p.* 469.

1807. *December* 11.

HAMMERMEN of CANONGATE, *against* JOHN CARFRAE, Coachmaker in Canongate.

No 18.
A coachmaker may make ironwork for carriages within burgh, though not a member of the Incorporation of Hammermen.

JOHN CARFRAE was a coachmaker in the Canongate of Edinburgh. In order to execute the iron work of the carriages which he sold, he kept a smithy, and employed a number of men in it working on iron. Neither himself nor his men were members of the Corporation of Hammermen of Canongate. Robert Douglas, deacon, and John Ross, boxmaster of the corporation, presented a petition against him to the Sheriff of Edinburghshire, in name of the corporation, praying to have him compelled to enter into it. The Sheriff's interlocutor was, "In respect that it is not alleged that Mr. Carfrae carries on the "smith work for any other purpose than coachmaking, Finds that the petitioners cannot compel him to enter."

The pursuers presented a bill of advocation. The interlocutor of the Lord Ordinary on the bills was, "Repels the reasons of advocation: Remits the "cause simpliciter to the Sheriff, and decerns." The cause then came before the Inner-house by petition and answers.

No. 18.

Argument for the pursuers.

The Corporation of Hammermen has beyond doubt the exclusive right of exercising the trade of a smith within the Canongate, and of compelling all who exercise that trade to enter into that corporation. The respondent has exercised that trade, for he has set up a smithy, and employed a number of men to work in iron after the manner of smiths in the strictest sense of the word, by fire, hammer, &c. and to manufacture nails, bolts, screws, locks, keys, &c. the most ordinary and undoubted produce of the smith trade; therefore he is bound to enter this Incorporation by the constitution of their privilege.

The circumstance that the respondent does not sell this smithy-work in a separate state, but only when incorporated with other materials into a complete article, is no ground of exemption from this obligation. If it were, the privilege of the pursuers would be of little avail, for very few articles of smith-work are sold in a separate state, and still fewer sold in that state from any necessity.

Nor is it any ground of exemption, that the respondent is only a *carriage smith*. The inevitable progress of the division of labour has separated the general trade of a smith into various branches, gunsmiths, locksmiths, tinsmiths, &c. but all of these have uniformly been included in the Corporation of Hammermen as smiths. The trade of a carriage smith is one branch of the general trade of a smith just as much as any other, and it includes a larger portion of the whole operations included under that name than most of these other branches. Those who exercise this branch, must therefore enter the Incorporation of Hammermen, just as much as those exercising any other. This is not the only trade that has thus been divided. All ancient trades have undergone the same change; and if the division had been allowed to exempt the branches from the obligation of entering into the several incorporations, there would have long ago been an end of all such incorporations.

But this has never been held a legal ground of exemption; on the contrary, in the case of the Wrights of Haddington, 1771, No. 85. p. 1966. it was found that wheel-wrights must enter into the Incorporation of Wrights, which is a similar case to the present.

This part of the trade is said to be *new*, because coaches have been newly introduced; but it is only a new application of the old trade of a smith, which has taken the place in all probability of some former application of it. Almost all productions of this trade have changed their nature since it was incorporated, but that has never been supposed to extinguish the incorporation privileges. Watches and plated work are new inventions, yet the makers of these enter into the Incorporation of Hammermen *. Farther, though the respondent may profess his intention to confine his smith-shop to the production of iron-work

* The case of Goodfellow, 4th July 1766, is an instance of the contrary being found lawful. No. 82. p. 1963.

No. 18. for carriages, yet the pursuers can have no security that he will do so. The same forge and workmen may produce all kinds of smith work, or he may sell separately the articles he professes to make for carriages, without the possibility of controul *.

Argument for the defender.

Corporations have no right, upon mere *similitude*, to bring a trade within their charter. In the progression of improvements, new arts must be discovered, and manufactures, never in contemplation of the creators of their privileges, brought into common use. The exercise of these new arts, if *bona fide* out of the ordinary range of the old incorporation, is not to be held within its privileges merely because in some part of the operation the aid is required of that kind of labour and skill, or of those materials which are described in the old charter of the craft.

Such arts are quite distinct from mere *parts* or ramifications of the old incorporated trade; and accordingly it has been often found that they do not fall under the privilege of any incorporation. This was found as to mantuamaking, claimed as a branch of their art by the Corporation of Tailors.—Tailors of Perth against Mantuamakers, No. 71. p. 1947; as to the making of hose claimed by the same incorporation in the case of White against the Tailors of Glasgow, No. 78. p. 1959; as to the weaving of cotton claimed by the Incorporation of Weavers, 6th March 1804, Weavers of Lanark against Porteous, No. 16. *supra.*

In the present case, the art of making iron-work for coaches is a new art. It was no part of the old trade of the Hammermen. For this sort of iron-work is of no use but for coaches; and was therefore unknown when this corporation was created. As the defender, therefore, confines himself to this new art, he is not bound to enter with the Incorporation of Hammermen.

2*dly*, This manufacture of iron is merely accessory to the manufacture of coaches, which it will not be pretended is within the privilege of the Hammermen, and such accessory operations cannot subject the manufacturers of complex articles to enter into corporations, though they do form part of an incorporated trade. If they did, such complex articles could not be made at all, for they often include in the manufacture operations forming part of a great variety of trades that are incorporated. But it was decided they did not in the cases of the Maltmen of Glasgow, 22d February 1750, No. 65. p. 1935; the Coopers of Perth, 8th July 1752 No. 112. p. 2006; the Cordiners of Glasgow, 3d Dec. 1756, No. 72. p. 1948; Wrights of Glasgow against Crosie, 8th March 1765. No. 80. p. 1961.

3*dly*, The defender is a member of guild, and therefore he may import springs and other articles of iron-work for the use of his manufacture of coaches, and

* See 29th January 1778, Freeland against Weavers of Glasgow, in which *silk* weaving, a new branch of weaving, was found to be included in the incorporated weaver craft, No. 89. p. 1975. But the authority of this decision was doubted by the Bench in the case of the Weavers of Lanark, 6th March 1804, No. 16. *supra.*

No. 18.

if he may import them, it follows that he may manufacture them by his own servants for this purpose. See cases of the Coopers of Perth, and Cordiners of Glasgow, (both mentioned above) reported by Lord Kames.

The Court unanimously "Adhered to the interlocutor of the Lord Ordinary."

Lord Ordinary, *Armadale.* Act. *John Jardine.* Alt. *Geo. Jos. Bell.*
Agents, *J.* and *T. Peat*, and *T. Manners.* *Scott*, Clerk.

M. *Fac. Coll. No.* 16. *p.* 45.

1808. *January* 26.

ALEXANDER CRAIG, Deacon, and JOHN ARMOUR, sen. Collector of the Corporation of Tailors in Glasgow, *against* ROBERT FORRESTER, Merchant in Glasgow.

No. 19.

A person, not free of the Tailor craft, may sell, in a shop within burgh, clothes made by freemen tailors, and may take commissions to get clothes so made.

THE Incorporation of Tailors in Glasgow have, by charters, an exclusive privilege of "brucking and using the liberty of their craft within that town." Robert Forrester, who was not a freeman of that craft, set up in the town what is called a slop shop, or man mercers shop, at which he sold clothes ready made, and cloth, which he also, if required by his customers, got made up into clothes, and delivered in that state, receiving the price both of the cloth and making. All these clothes were made within the burgh, by freemen tailors, whom Forrester employed for that purpose.

The Incorporation of Tailors brought an action against him before the Magistrates of Glasgow, to have him prohibited from doing this. Forrester admitted these facts; and as the pursuers did not chuse to undertake a proof of any others, the Magistrates on the above case *assoilzied the defender.*

The cause was carried to the Court of Session by advocation. The Lord Ordinary reported it on informations, (6th Dec. 1807.)

Argument for pursuers.

The practice of this defender puts into the hands of a person, who is not a freeman, a part of the tailor craft, to wit, the *furnishing of customers.* It converts the freemen tailors into mere journeymen under him. They are paid indeed by the piece; but that makes no difference. All the stock is his; all the customers are his. He receives the commissions for clothes, and the price of making them, and pays over to the workmen he employs a smaller sum, which is mere wages. It will be observed, that, by this practice, these workmen of the defender, being freemen, may have unfree journeymen under them, i. e. nominally so, but in truth under Forrester, who thus only pays one workman by the hands of another; so that, by having a few freemen under him, he may keep as great a number of unfree journeymen as he pleases; and all this within burgh. In short, he is to all intents and purposes a master tailor of Glasgow; and if this is allowed there will soon be no others in that town.