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. No. 18.

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.

No. 19. This is not only an encroachment on the privilege of the incorporated craft, but it is supported entirely by inducing the members of the incorporation to violate their duty and their corporation oath, which binds them not to pack or peel with unfreemen; and in this particular case, by its express words, the oath binds them, "that they shall not anywise be concerned, directly or indirectly, with any person whomsoever, in any branch or part of the trade, until he be first entered and admitted a freeman thereof." These freemen, most assuredly, who enable Forrester to take the full capacity of a master tailor, do violate this oath.

The defender cannot, therefore, be allowed to carry on business, by violating the privilege of the pursuers himself, and by inciting others to a breach of faith.

The doctrine here pleaded was sanctioned by the Court in the case of the Corporation of Hammermen of Glasgow against Dunlop, 18th February 1757, No. 73. p. 1950. and that of the Cordiners of Glasgow, there mentioned. To the same effect was the case of the Bakers of Edinburgh against Dowie, 4th December 1783, No. 90. p. 1976.

Argument for defender.

The defender never does make any clothes, nor has he any share whatever in the profit of making clothes; on the contrary, he employs to make them the pursuers themselves, freemen tailors, to whom he pays the full profit of their craft, just as any other customer does. The defender is the *customer* of the pursuers, for he employs them to make clothes which he sells. This is equally the case whether the defender has the clothes ready in his shop, or agrees to get them manufactured of such cloth as his customers chuse. In both cases they are manufactured by the pursuers themselves, and only sold, when made, by the defender.

But the selling of goods made by freemen is not part of the tailor craft, nor part of any incorporated trade, so as to be matter of exclusive privilege. It would be inexpedient in the highest degree to prohibit people from selling goods in the very place where they bought them; and there is no decision which supports any exclusive right to such an effect. Those quoted by the pursuers do not; for in all these cases the unfreemen shared the profits of *making*, and did not confine himself to *selling*. On the other hand, the doctrine of the defender is supported by the case of Wrights of Glasgow against Crosse, 8th March 1765, No. 80. p. 1961. and that of the Goldsmiths of Edinburgh against Cunningham, 2d March 1802, No. 10. *supra*, where it was taken for granted by the Court, as quite clear, that an unfreeman might sell jewellery, if he employed freemen jewellers to make it.

As to the second argument of the pursuers, it depends on the first: For if the defender does not exercise the tailor craft belonging to the pursuers, neither do the freemen he employs pack and peel with him, or violate their oaths.

The Court adopted the argument of the defender, and regarded it as a clear case. And accordingly, their interlocutor, on advising the informations, 6th December 1807, was, "Remit to the Magistrates in common form."

The pursuers reclaimed; and their petition was refused, without answers, 28th January 1808. No. 19.

Lord Ordinary, *Hermand.* Act. *Advocate.* *John Macfarlan.*
Agents, *John Dillon* and *J. Brunton.* *Scott,* Clerk.

M. *Fac. Coll.* No. 26. *p.* 88.

1808. *February* 24.
INCORPORATION of FLESHERS of DUNDEE, *against* ROBERT WOODCOCK.

No 20.
The son of a "Recruit," who has served "honestly and faithfully for the space of four months, but being unfit for service is rejected," is entitled to the benefit of the Act 24th Geo. III. C. 6.

WILLIAM WOODCOCK, quitted the army with the following discharge: "By Major John Ross commanding the thirty-first regiment of foot, whereof "Sir Adol. Oughton, K. B. is Colonel, These are to certify, that the bearer "hereof, William Woodcock, recruit in the regiment aforesaid, has served "honestly and faithfully for the space of four months, but being unfit for the "service is rejected, and is hereby discharged, having first received a full and "true account of all his clothing, pay, arrears of pay, and all demands what- "soever, from the time of his enlisting to this present day of his discharge, as "further appears by his receipt on the other side hereof. Given under my "hand and seal of the regiment, this thirteenth day of July one thousand seven "hundred and seventy-four.

(Signed) "Jo. Ross, *Major.*"

"On the back of the discharge there is the following docquet: "I William "Woodcock do acknowledge, I hath have received all my cloathing, pay, arrears "of pay, and all demands whatsoever, from the time of my enlisting in the "regiment and company mentioned in the other side, to this present day of my "discharge; as also days pay to carry me to.

"As witness my hand, this thirteenth day of July one thousand seven hun- "dred and seventy-four.

(Signed) "WILLIAM WOODCOCK."

Robert Woodcock, the son of William, having carried on business as a flesher in Dundee, the incorporation of that craft complained to the Magistrates, who (9th Sept. 1806,) assoilzied the defender with expenses. The pursuers then advocated the cause to the Court of Session; and Lord Armadale, in respect no answers had been lodged, remitted with instructions to alter; and the Magistrates altered their interlocutor accordingly. The defender then pursued an advocation, which was discussed before Lord Polkemmet, who advocated the cause, and assoilzied the defender with expenses.

The pursuers reclaimed to the Court.

Argument for Pursuers.—The defender being a *recruit*, and having been *rejected as unfit for service*, is neither within the words nor intendment of the statute.