

“Magistrates and Council of the City of Edinburgh, of date 29th July 1807; No. 21.
“repels the reasons of suspension.”

The Court, however, were of opinion that the act of Council 1785 applied to Clyde Street; that the proposed buildings must be restricted to 33 feet in height; and that the act of Parliament, while it authorises the still further extension of the Royalty, must be understood at the same time to have carried along with it, and to have imposed, all those existing regulations touching the police of building which had been previously established.

The Lords (24th May 1808) altered the interlocutor of the Lord Ordinary; and found that the regulations in the acts of Council of the 14th February 1781, the 15th of September 1784, and the 29th June 1785, extend to the buildings in question,—Therefore altered the interlocutor reclaimed against, and found that the respondents cannot raise their buildings higher than is allowed by the fourth clause of the regulations of 29th June 1785, and remitted to the Lord Ordinary to adjust the plan of the buildings, agreeable to these regulations, and to do farther in the cause as to his Lordship shall seem just.

Lord Ordinary, *Balmuto.*

Act. *Advocatum.*

Alt. *Rob. Forsyth.*

Will. Johnston and Nath. Grant, Agents.

M. Clerk.

J. W.

Fac. Coll. No. 42. p. 150.

1808. *July 5*

BAKERS OF PERTH *against* JOHN GLOAG, JAMES STEWART, and Others.

In the year 1800, a great number of the inhabitants of Perth and the neighbourhood, dissatisfied (as it seemed) with the manner in which they were supplied with bread by the bakers of that town, formed a society for supplying themselves with this commodity. Their articles of agreement were the following.

1st August, 1800.

Art. 1. This association to be called the Perth Wheaten Bread society, for the benefit of the Subscribers.

Art. 2. The number of Subscribers not to be less than one hundred, and no smaller subscriptions than one guinea; and for each half-guinea subscribed, to have one quartern loaf weekly delivered at their houses, if within the town and near its vicinity; the money so subscribed to remain as a fund for the purchasing of grain or flour for the benefit of the society.

Art. 3. Any member disposing of his bread, or any part of it, at an advanced price, so soon as the same can be proved, shall forfeit his right and claim to the society.

Art. 4. The business of the society to be under the management of twenty of their own members as a committee to be chosen annually, preses and clerk included in that number, who are to be chosen by the committee.

No. 22.

A society formed by a very large number of the inhabitants of a royal burgh, for the purpose of establishing a bakehouse out of the burgh, and supplying themselves and their own families with bread, is not contrary to the privileges of the corporation of bakers in that burgh.

No. 22. Art. 5. That the committee shall stand responsible for their intrusions of stock.

Art. 6. That the committee shall meet as they shall think proper, for the managing the business of the society.

Art. 7. That the committee shall open an account with the bank on the society's account, where the treasurer shall deposit what cash he has received, when it amounts to ten pounds or upwards.

Art. 8. That any member has the liberty to make a transfer of his part of the stock.

Art. 9. That the society, when constituted, reserve to themselves the power of altering or amending any of the above regulations, as they shall see proper.

Under these articles several hundred subscribers, partly inhabitants of the town, partly of the vicinity, having joined, the society built a bakehouse without the burgh, purchased flour, and employed workmen to bake it, as well as to distribute the loaves among the subscribers, and receive the (prime cost) price of them for the society. It did not appear that any of the members violated the articles by selling the bread they received, or that there was any departure in any respect from the scheme there laid down. In this way the society continued for about three years and a half, when the Corporation of Bakers of Perth (alarmed probably by the appearance of a new scheme of a similar nature) presented a petition to the Sheriff, praying to have this society prohibited "from baking bread for the use of themselves, or any other inhabitants of the town of Perth, or of distributing or retailing the same in any way."

The Sheriff, that the facts of the case might be ascertained, in the first instance, ordered the pursuers to produce the titles of their corporate rights; and allowed a proof to both parties. The pursuers produced no regular charter or seal of cause, but various documents, which with the parole evidence, sufficiently established (as seemed to be admitted) that they were possessed of the ordinary privileges of an incorporate craft in a royal burgh.

The Sheriff pronounced this interlocutor (10th September 1806): "Finds, that an association, called the Perth Wheaten Bread Society; has been formed for the purpose of purchasing flour, and baking bread for the use of the members of that society, under a provision, that no member should be permitted to dispose of any part of his bread at an advanced price: Finds, that bread has been baked by that society without the town of Perth, and delivered to members of the society, some of whom reside within, and some without the town of Perth: Finds that by the decisions of the Court of Session, when applied to the Baker Incorporation of Perth, the said Corporation do not possess the exclusive privilege of selling bread within the town of Perth, but possess the exclusive privileges of baking bread for sale within the town of Perth: Finds that by the decisions of the Court of Session, a person, not a member of the Incorporation of bakers, cannot sell bread within the town which has been baked by himself without the town: Finds that by law, an individual or individuals, not members of the incorporation of Bakers, may

“bake bread *in their own houses* for their own use. Finds it not proved that the members of the society in question have sold bread to others, or have baked bread except for their own use; and therefore on the whole dismisses the present action, and assoilzies the defenders.” No. 22.

The pursuers presented a bill of advocation to the Court of Session, which was passed, and they at the same time brought an action of declarator in that Court. By this time another society of the same nature with that above described, was formed in Perth; and accordingly, in the summons of declarator, the Corporation of Bakers called the members of both societies. The summons, setting forth the constitution and operations of both societies, concluded to have it declared, that the pursuers had a right to debar these persons from baking, either in a bakehouse within the liberties, or in a bakehouse situated without the liberties of the said corporation, bread of any kind or description, to be sold, distributed, or otherwise disposed of, for the use and subsistence of the lieges living within the said burgh of Perth, its liberties and privileges.” The processes of advocation and declarator were conjoined. The Lord Ordinary pronounced this interlocutor :

“In respect the Lord Ordinary concurs with the opinion of the Sheriff of Perthshire, in the process of advocation,—disjoins the said process from the process of declarator, and remits the cause simpliciter, and decerns: and in the process of declarator, dismisses the same, and assoilzies the defenders.”

The pursuers reclaimed.

On advising their petition, with answers, the Court (19th May 1808) “Adhered to the interlocutor of the Lord Ordinary.”

The cause came again before the Court, in a second reclaiming petition and answers.

Argument for pursuers.

The privileges of corporate trades undoubtedly form part of the law of the land. The political expediency of that part has been of late called in question by speculative men. But speculation has not been confined to the privileges of corporations; and no speculative lawyer ever imagined that laws were to vanish whenever their expediency became doubtful. If, then, the rights of corporate trades exist in our law, they are entitled to a fair interpretation, and a sufficient protection. They are not to be annihilated at pleasure by flimsy pretexts, as if there existed no objection to destroying them, but a mere difficulty in form. They are substantial rights, acquired and maintained by submitting to considerable burdens, and the complete destruction of them, without any compensation, must be regarded as a great immediate evil, and a most perilous precedent.

But the societies in question are nothing else than contrivances for the avowed, or at least obvious and direct purpose of destroying the corporate privileges of the pursuers; contrivances by which inhabitants of burghs, not freemen bakers, are to take the baker craft of the burgh into their own hands, to the ex-

No. 22. clusion of the freemen bakers. For this reason alone they ought not to be permitted, even though it were shown that they could in form be justified by the extreme application of some of the rules that have been derived from our decisions on the subject of corporate trades. It would then be clear that these decisions had been given without sufficient consideration; for the Court, when they pronounced these decisions, certainly had no intention of extinguishing the rights of coporations, but the reverse.

The pursuers, however, deny that any rule to be found in our decisions, carried to its utmost latitude, can justify the societies in question. It is admitted by the defender, that they supply a number of the inhabitants of the burgh with bread; but two defences are offered; it is said, *1st*, They do manufacture their bread without the burgh, and therefore may deliver it within to those who commissioned it.

The pursuers admit that it has been decided that the inhabitants of burghs may supply themselves, by purchasing from unfree workmen residing and working out of the burgh, and that these unfreemen may even deliver commodities within the burgh to those who purchased these commodities without it. But then these unfree manufacturers have no connection with the burgh at all. They are not inhabitants; and have no more to do with it than carriers who deliver goods manufactured at the other end of the kingdom. Such has been the situation of the unfree manufacturers in all those cases decided against incorporate crafts, in favour of free importation of commodities into burgh. Those cases still left the corporate tradesmen the advantage of being the only men of their trade living in the burgh. They could not only deliver commodities there, but sell them there, and take and seek for employment there, where it was best to be found. But it never was decided, that men living in the burgh, might supply the inhabitants of the burgh, with the commodities that were the subject of any of the corporate crafts, from a manufactory, whether within or without the burgh, unless they were free of that craft. It is impossible this should be allowed, not only because it would extinguish the corporate privileges altogether, but because no latitude of interpretation could admit that a man, living within a burgh, and supplying the inhabitants with the subject of a trade manufactured and delivered by himself, was not exercising that trade. The circumstance of their work-shop being on the outside of the walls, cannot therefore afford a sufficient justification to the defenders, if they, living within burgh, supply the inhabitants with bread.

2d/y, It is said that they do not supply any body but themselves, and that they may do this either separately or by a combination.

This is a distinct argument; and, if good, would equally justify them though their bakehouse were in the burgh. But it is obviously impossible to stretch this indulgence to such a length. To prevent individuals baking for their own use within burgh was impossible; and it was very little necessary for the beneficial use of the corporation right, as the corporation was in no danger from

the competition of such bakers, Such baking, too, did not, in ordinary language, figure as the *baker craft*; and, therefore, it was allowed notwithstanding the corporate privilege. But when a number of individuals, inhabitants of a town, come to a baker and say to him, "We wish to set up a bakehouse; we shall furnish you with a workshop and capital, pay you for your trouble, and you shall bake and sell bread for our behoof;" this seems certainly to be setting up the baker craft. It matters not that they say, "you shall sell bread to none but ourselves;" if their numbers are sufficiently great, that can be of no consequence. The full trade of a baker is exercised without going beyond them for custom. The profits of this trade, to be sure, are divided among a great number, but the trade is exactly the same. That is just the present case. The full craft of a baker is exercised to a great extent by these societies, and therefore they cannot be justified by pretending that they bake only for themselves. It was only because baking of this sort did not interfere materially with the exercise of corporate rights, and did not amount strictly to exercising the baker craft, that it was allowed; but if it can be so combined as to do both in the plainest manner, the reasons for allowing it no longer apply.

It is submitted, in the *last* place, that to form a combination, of which the direct object is to destroy the privilege of a corporation of the burgh of Perth, is contrary to the duty of the inhabitants of the burgh, The Magistrates acted for behoof of the burgh itself, that is, of all its inhabitants, in granting such privileges; and having so granted them, neither the Magistrates, nor the people for whom they acted, can, without injustice, render such grants wholly ineffectual. If it has become inexpedient to continue them, let them be taken away by act of Parliament, and for an equivalent, but not in this way.

Argument for defenders.

The whole argument of the pursuers is founded upon an assumption that two things are the same which are quite different, viz. violating a right, and doing what renders the exercise of that right less advantageous. The defenders certainly have done, and mean to do the last, but not the first.

The last is clearly not a thing which a Court of law can prohibit. There are a thousand uses of property that render the use of property in others less advantageous, which yet no body pretends to prohibit. In this very case, many things, unquestionably legal, must have in fact diminished the advantage arising from the pursuers privilege. The use and sale of potatoes is an instance. Nor is there any limit to the effect that such things may produce without being unlawful. They may wholly extinguish the value of rights without giving any right to complain. Though potatoes should be brought to such perfection as to supersede bread, and extinguish the corporation of bakers altogether, that would give them no right to prohibit the use or the sale of potatoes; and things of this sort, it will be observed, may be done not merely by individuals, but by combinations to any extent. If 5000 people should join in raising or importing potatoes, it would not become at all more illegal on that account.

No. 22. The mere circumstance of combining is neither good nor bad. It depends entirely on the object of the combination whether it is illegal or not. In so far therefore, as the pursuers say that, by the operations of the defenders, the advantage of possessing their exclusive incorporate right will be diminished, the defenders do not deny the fact, but they deny that it is at all relevant. The Court are bound to secure to them the possession of their right, but not at all to provide that the possession of that right shall always remain equally profitable. It may be, that when corporation privileges were granted, they were expected to remain equally profitable. All laws that depart from the great principles of equity and expediency are liable to fail in producing their intended effect; but that is no reason for courts of justice making them more effectual by still greater encroachments upon these principles. The defenders cannot, therefore, suppose that the Court will reverse its decisions and devise new restrictions on the inhabitants of royal burghs, in order to render the rights of corporations profitable.

It is necessary then for the pursuers to show that their right has been violated, that is the proper point of dispute.

The exclusive right of the pursuers is not absolutely that of supplying the town of Perth with bread, but merely that of vending in the town bread baked by themselves.—See case of Hammermen of Glasgow, 18th January 1757, No. 73. p. 1950. Unfreemen may undoubtedly carry into the town and deliver there bread that is baked out of it, if it be previously commissioned, though they cannot have a shop*. Now, if the defenders supplied all the other inhabitants of Perth, they would still be keeping within this line, and not violating the corporation privilege; for their bakehouse is without the town, and they have no place of sale, nor do they sell any bread within it; they do no more than deliver bread baked out of the town to those who have previously commissioned it. It is said that *inhabitants* of a town cannot do this; but no authority can be given for this doctrine. It evidently is of no importance in such questions where a man himself lives; the point of importance is, where his work-shop or sale-shop is. All unfreemen who carry commodities manufactured out of burghs, into them to deliver on commission, must remain a considerable time in burgh. Can it be said how long they are to stay there? or was there ever an instance of a person prohibited from living in a burgh because he had without the walls a manufactory of articles of an incorporated trade, or a share in such manufactory? An inhabitant of Edinburgh, at that rate, must have no share in a manufactory in London, because the manufacture may be brought into Edinburgh. This is quite absurd, as well as destitute of authority.

* See Coppermiths of Edinburgh, 6th August 1768, No. 84. p. 1966. Goldsmiths of Edinburgh, 2d March 1802, No. 10. *supra*. and Bakers of Haddington, 10th June 1807, (not reported.)

But, *2dly*, The defenders do not supply any of the inhabitants of Perth besides themselves ; and, for this separate reason, they do nothing contrary to the privilege of the pursuers.

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It does not appear that the exclusive right of incorporated trades ever went so far as to prevent persons in burgh from manufacturing for their own consumption and that of their families ; and it is a settled point of law, they may do so now. (Even an innkeeper was found entitled to manufacture for the supply of his inn.—Case of Maltmen of Glasgow, No. 65. p. 1934.) This they may do, not merely by their own hands, but by the hands of their servants. But if they may do this, there can be no reason why they may not manufacture for their own use *in company*, by using the same oven and the same servant or servants? This, accordingly, is all that is done in the present case. There is a joint bakehouse, and a joint stock of flour, for which each person pays exactly in proportion to the bread he receives. The original subscription, and the prime cost paid on receipt of the loaves, are both in this proportion. It is therefore precisely the same thing as if each person gave his flour to their common servant, whom they paid according for the work he did for each, and had that flour delivered back to him baked. This they might do past all controversy if they lived in the same house ; and it can make no odds that they live in different houses. It is true, this is a better mode of baking for their own use than baking separately, and therefore will be more generally adopted, and diminish more the advantage which the corporation enjoys from the possession of their exclusive right ; but it is no violation of that right. It is just like the use of an improved private oven, or any other better way which may be discovered of using the right of baking for their own consumption. It is not the exercise of the baker craft ; for that consists in baking and selling to other people, and not in baking for private use in any way, however convenient.

As to the duty of the inhabitants to the burgh, in regard to corporations, they are bound to respect the corporate rights, whether expedient or not, so far as they go, but they are not bound by any duty to sacrifice their own convenience, and allow the general interest to suffer in order to give the incorporations advantages which their rights are insufficient to secure to them. The corporation might just as well say it was the duty of the inhabitants not to employ bakers residing out of the burgh, but they will not pretend that that is a legal duty.

The Court were much divided.—The majority thought that the first argument of the defenders was well founded, and was supported by the case of Bakers of Haddington, (10th June 1807.) Several Judges also declared their opinion, that the second argument was well founded ; and it was particularly observed, that there was nothing unlawful in combinations to do what was in itself not injurious ; and that the circumstance of baking for their own use, after the manner of professed bakers, was no test of exercising the craft of the corporation, since an hospital or a school might bake for its own use in that way.

No. 22. Several Judges thought, that the combination, being formed for the express and direct purpose of destroying the trade of the corporation, and rendering its rights nugatory, was illegal; and that baking for private use could not be allowed, if it assumed a form by which the full profits of the trade were drawn, however divided, and by which it tended so immediately to supersede the employment of the corporation.

The Interlocutor of the Court was, (5th July 1808,) "Adhere to the inter-locutor complained of."

Lord Ordinary, *Meadowbank.* Act. *George Jas. Bell.* Alt. *J. S. More.*
J. Murray and W. Ellis, Agents. P. Clerk.

M.

Fac. Coll. No. 66. p. 240.

* * The case of Bakers of Haddington, above referred to, has not been reported. It was ultimately decided the same day with the above case from Perth. The question was, whether a Baker residing in the Nungate of Haddington (out of the Royalty) was entitled to send his servants into the town with bread to such inhabitants as had previously ordered it from him. It was found he was entitled.