

1803.

INCORPORATION OF
TRADES OF
PERTH
v.
PROUDFOOT,
&c.

back to the Court of Session in Scotland to proceed accordingly.

For the Appellant, *John Clerk, Thomas Thomson.*

For the Respondents, *Wm. Adam, Adam Gillies.*

Unreported in the Court of Session.

JAMES CHRISTIE, Deacon, and ROBERT KEAY,
Boxmaster of the Incorporation of Hammermen of Perth, and Others, Members of the Incorporation of the said Burgh, } *Appellants;*

JAMES PROUDFOOT, Merchant, Dean of Guild of Perth, and Others, Members of the Guild Council of the said Burgh of Perth, } *Respondents.*

House of Lords, 6th December 1803.

BURGH—TRADES CORPORATIONS—PRIVILEGES.—The sons, and sons-in-law of the several incorporated trades of Perth, had the privilege of entering their respective corporations at lower or illusory dues. By the charters erecting the guildry corporation, the *members* of these several trades had a privilege also of entering the guildry, upon paying smaller dues than was exacted from strangers. The sons, and sons-in-law of the trades incorporation, imagining that they had a similar right, sought to be entered as members, on payment of the like small dues. Held that they could not claim to enter the guildry, except on paying the dues as strangers.

In the burgh of Perth, as in all Scotch burghs, the burghesses are of two descriptions,—merchant-burghesses, so called from their dealing in merchandize only; and trades-burghesses, who are engaged in mechanical employments. All the burghesses of Perth (excepting weavers and waulkers) are guild brethren, and, as such, have certain rights and privileges.

There are seven incorporations of trades, burghesses in Perth; hammermen, bakers, glovers, wrights, taylors, shoemakers, fleshers. All these incorporations have peculiar rights and privileges, and separate funds under their own management. As long as a burghess is a member of any of the trades' incorporations, he can only exercise the calling, and enjoy the peculiar privileges of that incorporation.

There is another incorporation composed of merchant-burgesses, or such of the guild brethren as are not members of any of the trades' incorporations. This is called the *Guildry Incorporation*, which also has its peculiar privileges, and separate funds under its own management. But any member of the trades' incorporations might enter with the guildry incorporation, and carry on merchandize; though, in that case, he must relinquish his former calling.

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The sons and sons-in-law of the members of the guildry incorporation had the privilege of entering with that incorporation, on payment of certain small fees; and, in like manner, the sons and sons-in-law of the members of the trades' incorporations, had the right of entering, when duly qualified, each with the trades' incorporation to which his father, or father-in-law, belonged; and as the members of the trades' incorporations had right to enter with the guildry incorporation, so, in this case, it was contended that their sons, and sons-in-law, had the same right of entering with the guildry incorporation that belonged to the sons, and sons-in-law, of members of that incorporation.

When the son, or son-in-law, of a trades' burghess entered as a merchant, or member of the guildry incorporation, he paid the following dues, viz. 4 pounds Scots, of burghess money, to the town and the guildry, equally; ten merks to the dean of guild; ten merks for the merchants' upset; 6s. 8d. Sterling in name of football, with 6s. as the dues of Court. When he entered as a trades' burghess, or member of a trades' incorporation, he paid 4 pounds Scots of burghess money, to the town and guildry, equally; ten merks to the dean of guild; 4 pounds Scots for the trades' upset; and 6s. as the fees of Court.

In 1791 John Wright, who was married to a daughter of David Imrie, baker, a trades-burghess of the burgh of Perth, claimed to be admitted as a merchant burghess in the guildry incorporation, in right of his wife, for the entry money and dues payable by others in similar situations. This application was rejected, on the ground that the sons-in-law of trades burghesses have no right, such as the trades burghesses themselves had, of entering with the guildry on paying certain smaller fees, but must enter the guildry as strangers, on paying the same burgh fees as strangers did.

Upon this the appellants brought the present action of declarator, to vindicate their ancient privileges, and to have

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that right declared. And the Court, of this date, pronounced this interlocutor: "Upon report of Lord Cullen, and "having advised the mutual informations for the parties; "the Lords sustain the defence, assoilzie the defenders, "and decern."* On reclaiming petition the Court adhered.

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellants.—The charters and other grants, as well in favour of the burgh, as in favour of the trades in particular, establish a right in the latter of being guild brethren; and the uniform practice that has followed upon these charters, confirms the same right. The consequence of this right is, that although the members of the trades' incorporations of Perth are not, while they continue so, members of the guildry incorporation; yet they have a title to be admitted members of that incorporation, as guild brethren, whenever they choose to leave the trades incorporation to which they belong, and, on contributing to the guildry funds the common dues of ten merks as a merchant's upset; at least they have, by the immemorial practice of the burgh, possessed that right without dispute, as a right agreeable to the true construction of the charters. It is believed that in every burgh, and every incorporation connected with a burgh in Scotland, the sons and sons-in-law of freemen are admitted upon easier terms than strangers: a natural practice, sanctioned by the charters as well as by general, ancient, and immemorial usage. The sons and sons-in-law of merchant burgesses, members of the guildry incorporation, have from time immemorial, as the sons and sons-in-law of guild brethren, been allowed admittance as members of the guildry incorporation, in right of their inheritance, at the low dues in question; and, in like manner, the sons and sons-in-law of trade burgesses have,

* LORD PRESIDENT CAMPBELL said, "The pursuers are not well founded in their plea, which goes to abolish altogether the distinction between guildry and trades. I am clear that they are distinct, and although sometimes the guildry have entered sons and sons-in-law of tradesmen at low or illusory dues, there seems to be no good reason why they should continue this practice longer than they find convenient."

Defence sustained.

from time immemorial, as the sons and sons-in-law of guild brethren, been allowed admittance as members of the guildry incorporation, at the same low dues, in right of their inheritance, not *ex gratia*, as the respondents have pretended, but in virtue of a right founded on the constitution of the burgh, and on ancient usage and possession.

Pleaded for the Respondents.—The right set up by the appellants is not supported either by the charters or by the usage pleaded, and upon which the appellants rely, and, if allowed, would be injurious to the incorporation of guildry, and also destructive to the constitution of the burgh of Perth. In the charters referred to, there is not one word in any of them which relates to the *sons and sons-in-law of tradesmen* having like privilege of entering the guildry with members of the trades' incorporations themselves, or with the sons and sons-in-law of guild brethren. Nor was there any thing in these charters which gave them, as “tradesmen burgesses of the town of Perth, equal rights and privileges with the merchant calling.” And as to the usage referred to, of the twenty-three sons and forty-four sons-in-law of tradesmen who had been admitted members of the guildry incorporation between 1686 and 1788, this could not support the right claimed, because, 1st, It was not a uniform practice or usage, nor were the admissions granted as matter of right. They were conferred as matter of favour, and with declarations that they should not form precedents in future. Of the instances adduced, ten at least were admitted under such express declarations.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellants, *John Clerk, Thomas W. Baird.*

For the Respondents, *C. Hope, Ar. Fletcher.*

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