

brandy, raisins, and other sorts of merchant wares; the Dean of Guild and his brethren having fined him, the trades raised a declarator, that any free craftsman might exercise any sort of merchandise within burghs; and the merchants repeated their counter declarator, that none within burghs royal could vend and retail staple commodities, such as wine, wax, silks, spiceries, wald, &c. but only merchants and guild-brethren. The tradesmen founded their declarator, *first*, On the old acts of Parliament, as act 84, Parliament 1503; act 107, 1540; by which all burgesses of royal burghs, without distinction, whether merchants or tradesmen, may exercise merchandise, by trading in native commodities, and may retail foreign goods, providing they buy them from merchants of royal burghs; and, by the late acts of Parliament in 1672, 1690, and 1693, trade is more enlarged, and its extent communicated to all inhabitants within baronies and regalities, they bearing a proportional burden, and relieving the royal burghs of a part of their taxation; *ergo multo magis* must that privilege pertain to tradesmen-burgesses and indwellers in royal burghs. The merchants declarator was libelled on the 12th act, Parliament 1466; and act 107, 1487, by which tradesmen are expressly prohibited to use merchandise, unless they first renounce their craft; and, by a charter in 1540, from King James V. the guildry of the burgh of Stirling is established with ample privileges.

THE LORDS having heard this case in presence, sustained the guildry's declarator, and rejected the declarator raised by the trades, who appealed to the Parliament, and protested for remeid of law. *See APPENDIX.*

Fol. Dic. v. 1. p. 118. Fountainhall, v. 1. p. 752.

1707. June 26.

TAYLORS of EDINBURGH *against* TAYLORS of CANONGATE.

LORD POLLOCK reported the Taylors of Edinburgh and the Taylors of the Canongate, being mutual declarators of their rights and privileges; those of Edinburgh founded on their seals of cause flowing from the magistrates and town council in 1500, and since ratified in Parliament, giving them liberty to seize upon and confiscate all work made without the town, and imported, seeing the royal burghs pay the sixth part of all the taxation laid on the kingdom, and Edinburgh pays a considerable part of it, and the tradesmen there cannot pay scot and lot, if strangers are allowed to bring their made work into the town; and by their not paying stent, undersell them. The Canongate taylors produced their seals of cause from the Abbots of Holyroodhouse, and Barons of Broughton, and *contended*, That though they be debarred to make to burgess-inhabitants within the burgh, yet no law could fine them for making cloaths to noblemen and gentlemen strangers, who came to Edinburgh to attend their affairs at the session, or otherwise; and the seizing of such cloaths was an act of oppression they had always reclaimed against: Likeas, by an act of sederunt in 1687, the Members of the College of Justice are excemed, and may employ

No 57.
merchandise,
within burgh,
unless they
first renounce
their craft.

No 58.
Found that
Taylors in
Canongate
were not en-
titled to work
to citizens of
Edinburgh;
but might to
strangers
temporarily
resident there.

No 58. any tradesmen they please, whether freemen dwelling within the said burgh, or stranger-artificers without it; and though they were free of the town's cess, as they are not, yet they bear a proportional burden with the shire.—THE LORDS not having time to red the marches betwixt the two competitors, they declared that they would hear them fully in November next.

June 16. 1708.

THE LORDS advised the cause between the Taylors of Edinburgh and Canon-gate, mentioned 26th July 1707; and it being argued among the Lords, that a difference is to be made betwixt work done for actual burgesses, bearing scot and lot, within the burgh, and gentlemen and other strangers, who resort to it for private business, and spend their money in the town: As to the *first*, It was thought the magistrates, by their seals of cause, might thirl and bind their own citizens to employ none but freemen of the craft, and if they transgressed, they had power to fine them; but *quoad* others not actual burgesses, they could not pretend the like jurisdiction; for however *statuta civitatum ligant concives*, yet the doctors do not extend these by-laws *ad forenses* coming for a time to stay in the burgh; and though these seals of cause be ratified by the King, yet *talis confirmatio nihil novi juris tribuit*; and the cities of London and Amsterdam found such inconveniences in limiting the people to employ such particular tradesmen, that they wholly abrogated these privileges, and left every one to his freedom to employ whatever tradesmen they pleased, who wrought best and cheapest. It was on the other side *contended* for the deacon and town taylors, that they were clearly founded, not only in their seals of cause, but likewise in a plain act of Parliament, viz. act 1592, discharging the exercise of all crafts within the suburbs, to the prejudice of the freemen who bear the public burdens, and are abler to furnish the leiges than these obscure clandestine interlopers; and it cannot be denied, but all the Canongate is a suburb of Edinburgh.—THE LORDS divided the vote, and first found, That the burgesses of Edinburgh liable in stent, scot and lot, with watching or warding, are bound to employ freemen taylors, and no other; and if they transgress, they may be fined by the magistrates: But as to strangers dwelling within the burgh, though their gifts bear that neither Laird nor Lord shall employ unfreemen; yet this seeming to be contrary to public utility, it was ordained to be further heard; though many of the LORDS thought these might employ what artificers they pleased. And this is besides the privilege claimed by the members of the College of Justice; and accordingly, upon the 29th November 1706, the LORDS found so and discharged seisure.

Fountainball, v. 2. p. 388. & 443.