

No 71. to be a corporation. As such they enjoy the accustomed exclusive privileges of corporations, and elect a deacon, who is a counsellor of the burgh in right of his office.

They brought an action against the defenders, setting forth the antiquity of their corporation, and its possession of 'the exclusive privilege of making all kinds of taylor-work;' that the defenders, not being free of the corporation, had exercised the business of mantua-making within the liberty of that burgh; and concluding, that the defenders should be decerned to desist therefrom, and find security to that effect.

The defenders *pleaded*, That they had not encroached upon the exclusive privileges of the incorporation; for that the making of womens apparel is no kind of taylor-work. According to the received notions of decorum, it is an improper employment for men, and, in consequence of the modern fashion of dress, it has become an employment wholly distinct from that of a taylor. Further, by the law of corporations, every one must have his qualifications tried before admission; and after admission, is entitled to the privileges of the corporation. Now the pursuers cannot, in the present case, either make this trial of the defenders, or bestow these privileges upon them. Hence it follows, that mantua-making is distinct from the employment of taylors, and in no sort dependent on it.

Answered for the pursuers: The exclusive privileges of corporations, as by law established, are not to be impaired under imaginary pretences of decorum. Male stay-makers are employed by women; and, by parity of reason, male taylors may. In former ages there was decorum as well as in the present; there was also a diversity in dress; and yet the occupation and name of mantua-makers were then unknown, and men only were employed in making womens apparel.

'THE LORDS found the action not competent; and that therefore the pursuers have no right to debar the defenders from the exercise of the trade of mantua-making.'

Reporter, *Prestongrange*. Act. *Craigie et Pringle*. Alt. *W. Stewart, S. D. Dalrymple, et Moncrief*.
Clerk, *Justice*.

Dalrymple.

Fac. Col. No 219. p. 319.

No 72.

An unfree-man, though not entitled to the benefit of the town's market, may manufacture goods within the town for exportation.

1756. December 3.

INCORPORATION of CORDINERS in Glasgow, *against DUNLOP and Others*.

JAMES DUNLOP, merchant in Glasgow; and others, having entered into a company for manufacturing boots and shoes for the plantation trade, the Shoe-makers of Glasgow brought a process against them, concluding, that they ought to be decerned to desist from their manufacture, unless they will enter with the cor-

poration, paying each L. 100 Scots of upset, and each giving in a sey-piece.— The defenders *answered*, That purposing to carry on their manufacture by their foreman, they were willing to pay for his entry, and that he should give in a sey-piece. They insisted that this was all the pursuers were entitled to demand. Every cordiner, it is true, before he can set up a booth, must be entered and pay entry-money. But after a man is thus made free of the craft, he may employ as many journeymen as he pleases, and is not limited as to the extent of his trade. He may also enter into a copartnery with whom he pleases, communicating to them a share of his gains. The copartnery, in the eye of law, is but one person: They have but one booth, and cannot be liable but for one entry. Again, with respect to a sey-peice, to insist, that each of the members must produce a sey-piece, is in other words to insist that the craft has a privilege to bar such a copartnery altogether. They have no such privilege by their seal of cause; nor could the burgh give them such a privilege.

This matter was reported to the Court; and, at advising, it occurred, that the defenders, in vending their manufacture, did not insist for the privilege of the town market, but exported the whole to the plantations. This circumstance suggested a defence which had been omitted by the defenders counsel, viz. That the privilege of craftsmen in royal burghs is confined to the market of the burgh; and that every man is free to deal in manufactures, provided he do not vend them within the town. In support of this defence, it was observed, That the privileges of a merchant in a royal burgh are much more extensive than those of a craftsman. Foreign trade is confined to merchants in royal burghs. They have a monopoly of this trade exclusive of all others, whether living in town or country. The privileges of craftsmen are confined within the royalty, and they have no privilege *ad extra*. None of the charters of erection of royal burghs bestow upon craftsmen any privilege more extensive. Hence it is that no unfreeman has the privilege of the town's market, or can set up a booth within the town for selling to the inhabitants. But nothing bars any burgess, or inhabitant of a royal burgh, to make work of any kind; provided he export the same, or dispose of it any where out of the privileges of the burgh. Upon this principle was founded the judgment given, 8th July 1752, the Wright-calling of Perth *contra* Davidson and others, No 68. p. 1938. The defenders were servants to one of the fishing companies of Perth, and were employed by them in making barrels and kits to pack salmon for foreign exportation. The Court assoilzied, upon this medium, That any man may make barrels and kits for the use of foreign trade. And it was the opinion of the Judges, That if a society dealing in foreign trade can import the materials or utensils of their manufactory, it cannot be unlawful to employ their own servants when it saves importation.

'THE LORDS found, That the defenders, as merchants, may, without being entered with any craft, make boots, shoes, saddles, &c. for foreign export.'

No 72.

The Judges who were against the interlocutor maintained the following proposition, That it is the privilege of freemen only to work within the burgh; and that all others are excluded from this privilege. This proposition is evidently untenable: For it was never doubted that any man may work for the use of himself and family. He may bake, brew, make shoes, gloves, wearing clothes, &c. for this end, as well as for presents to his friends. Tenant, No 65. p. 1934. was, by this Court, found entitled to brew, bake, kill oxen and sheep for the use of his inn. Hence it clearly appears, that the monopoly which craftsmen enjoy is singly that of vending their manufactures within the town.

Sel. Dec. No 121. p. 172.

1757. February 18.

CORPORATION of HAMMERMEN in Glasgow, *against* JAMES DUNLOP, and Others, Merchants there.

No 73.

Notwithstanding the exclusive privileges of corporations, merchants, are entitled, by entering into copartnership with particular freemen, and employing their own stock, to furnish themselves with goods for exportation.

THE blacksmiths, saddlers, and others professing the hammermen trade in Glasgow, were erected into an incorporation, by seal of cause, in 1536, with exclusive privileges; and, among others, that none shall set up a booth to work in the burgh till he be made a freeman, and undergo a trial; and this incorporation has immemorially exercised this privilege.

James Dunlop, and others, merchants in Glasgow, entered into copartnership, proposing, upon their own stock and credit, to carry on the manufactory of making saddles, principally for exportation. They assumed as partners three persons who were freemen of the incorporation; and they set up shop in their name.

The incorporation brought an action against them, *concluding*, That the *three saddlers* should be discharged *to pack and peel with unfreemen*, and the *merchants* prohibited to *work* in the business appropriated to the incorporation.

Pleaded for the defenders, *imo*, The three persons in whose name this manufactory is carried on, are freemen of the incorporation, and therefore entitled to carry on this trade; nor is the incorporation entitled to enquire who are their copartners in it, or by what stock or credit they are enabled to carry it on.

2do, The exclusive privileges competent to incorporations in royal burghs, do not entitle them to exclude merchant burgesses, freemen of these burghs, and as such by law entitled to the privilege of foreign trade, from manufacturing by themselves, or others, such commodities as they have occasion to export to foreign parts. They can only prohibit the making saddles, &c. for sale within the burgh. And in support of this, it was further *argued*, That every inhabitant could import from London, or elsewhere, in the course of foreign trade, even for sale within burgh, however prejudicial it may be to the interests of these incorporations: That every innkeeper may bake, brew, or slaughter meat for the use