

the society thought fit to exact; which is contrary to the policy of the nation, disallowing of all societies, unless by particular grants or seals of cause. To this purpose, was cited act *anno 6to*, Geo. Reg. entitled, "An act for securing better powers and privileges, &c." which statutes, "That the acting, or presuming to act as a body corporate, without legal authority, shall be deemed a public nuisance, and be illegal and void."

"It was found that the masons had not *personam standi*, and could not sue."

Fol. Dic. v. 2. p. 375. Rem. Dec. v. 2. No. 2. p. 4.

No. 3.

1761. June 13.

CRAWFORD *against* MITCHELL.

THE tradesmen of Saltcoats, a burgh of barony, incorporated themselves, by an agreement, which was approved of by the superior of the town, binding themselves by certain regulations, and enacting, That every tradesmen coming to the town, should be obliged to subscribe the agreement. A shoemaker having subscribed it, afterwards infringed some of the rules, upon which the society pursued him before the Baron-Bailie for fines and arrears of contribution. He brought a suspension, pleading, That they were no legal corporation, and had no title to pursue. The Lords suspended the letters.

Fol. Dic. v. 4. p. 283. Fac. Coll.

No. 4.

* * This case is No. 77. p. 1958. *voce* BURGH ROYAL.

1771. December 13.

ADAM WILSON, Merchant in Dundee, and others, *against* DAVID JOBSON,
Writer in Dundee.

THE pursuers, for themselves, and as commissioners appointed by the Associate Congregation of Dundee, brought an action against the defender, subsuming, that, in the years 1763 or 1764, the said Associate Congregation, then called Antiburghers, had authorised Jobson, then one of their members, to purchase ground for building a house for public worship for the said Congregation, and to enter into contracts for building the same, &c. That considerable sums had been contributed and impressed into his hands for these purposes: That, in place of taking the rights in his own name as trustee, or in the name of the managers for the use of the congregation, he had taken them to himself absolutely, his heirs and assignees; and it was therefore concluded, that he, Jobson, should grant to the pursuers, for themselves, and in name of the other members of the Congregation, a valid disposition of the subjects, together with the other writs, and should deliver up the keys of the said house of worship.

No. 5.

An action sustained at the instance of a majority of private individuals, who had united themselves for religious purposes into a society called the Antiburgher Associate Congregation of Dundee.

No. 5.

The cause of this action was a dissension that had taken place in the Congregation. Jobson having been examined, in his deposition admitted that their pastor, to whom he and others adhered, had altered the opinions held at the time the house was built, and that they now differed from these Antiburgher principles in sundry particulars, especially with respect to the National Covenant, and Solemn League and Covenant, and the use that is made of them. These opinions being considered as innovations, that part of the Congregation which differed had applied to the Associate Presbytery, who, *causa cognita*, had laid the pastor for some time under a sentence of suspension. Jobson, in his deposition, also admitted, "That he understood the right was taken in his name to the house and area above mentioned, for behoof of the then Congregation professing at that time the Antiburgher principles."

In defence to this action, the defender pleaded :

That the pursuers had no title that could be sustained, in a court of law, to compel him to denude. Every action, in a Court of justice, must proceed, either at the instance of individuals who could qualify a proper title and interest to carry on the action, or at the instance of a body corporate, which had a name known in law, under which it could either sue or defend. Here, in the present instance, the defect lay : The Seceding Congregation of Dundee was no incorporation ; it had no *nomen juris* ; and it was a rule in law, that, unless the pursuers could produce a sufficient title, the defence must be sustained. This point had been established by sundry decisions, Mason Lodge of Lanark *contra* Hamilton No. 3. p. 14554. The same question had been decided in 1752, Bryson, &c. *contra* Wilson and Bain, with regard to the Associate Congregation of Bristo ; and in 1757, Morison *contra* Struthers, a similar judgment had been given *.

The pursuers answered :

That though they were no body corporate, they were, by the law of Toleration, a legal society, and as such entitled to the protection of the law, and to the enjoyment of all their civil rights and liberties. In all private societies of this nature, their common concerns must be regulated by a majority of the constituent members. The acceptance of a trust, for their behoof, implied an obligation to denude, when required by those for whose behoof it was created ; and as the pursuers, and those who concurred with them, made a great majority, both of the original members of the Congregation, and of those who have since acceded, it was a manifest breach of trust in the defender to refuse to denude when his constituents required it.

The Lord Ordinary pronounced the following interlocutor : " In respect Mr. Jobson the defender has admitted in his deposition, that he understood the right of the meeting-house and area in question to be a trust in his person, for behoof of the Antiburgher Congregation ; and that it appears that the pursuers, with those that concur with them, were a majority of that Congregation at the time of

* These cases are not collected.

the trust;—sustains the pursuers' title to carry on this action; and finds that the defender is bound to denude himself of said trust in their favour, upon being reimbursed of the money laid out by him whereof he is not already indemnified.”

No. 5.

The question having been reported to the Court, an exception was taken to the designation the pursuers had assumed in their action, viz. as in the name of the Associate Congregation of Dundee, subject to the Associate Synod; which having accordingly been struck out, the Court adopted the Lord Ordinary's interlocutor, and sustained the action.

Lord Ordinary, *Monboddo*.
Clerk, *Gibson*.

For Wilson, &c. *A. Lockhart*.
For Jobson, *Macqueen*.

R. H.

Fac. Coll. No. 120. p. 354.

* * For the case of the Associate Congregation of Perth, in which this decision was quoted as a precedent, see Sect. 8, *h. t.*

1791. *November 17.*

The MINISTER, HERITORS, and KIRK SESSION, of DALRY, *against* JOHN NEWAL and Others.

ABOUT the middle of the last century, a large sum of money was bequeathed for the purpose of erecting a free grammar-school in the parish of Dalry. There was a nomination of trustees for managing the fund; but as none of them had ever acted, the administration was assumed by the heritors and kirk-session.

Mr. Newal having borrowed a part of the money, for which he granted his bond to them, they obtained a decree of constitution, and deduced an adjudication against his estate.

It was afterwards objected to the validity of the adjudication, that these processes were incompetent, having been carried on at the instance of the heritors and kirk-session as a public body, whereas, not being incorporated, they ought to have sued individually. But

The opinion of the Court being, that, from the nature of the case, the heritors and kirk-session were necessarily to be considered as a body corporate,

The Lords repelled the objection.

Reporter, *Lord Dreghorn*. Act. *W. Robertson*. Alt. *D. Cathcart*. Clerk, *Menzies*.

S. *Fol. Dic. v. 4. p. 283. Fac. Coll. No. 190. p. 396.*

No. 6.

The heritors and kirk-session of a parish, in respect to a charitable fund under their administration, entitled to sue and defend as a corporate body: