

“ the territory of the pursuers, finds, That they had no right to carry on NO. 3.
 “ said work.”

Chalmers reclaimed, and

Pleaded: By various statutes, 3d Geo. III. C. 8., 24th Geo. III. C. 6.,
 42d Geo. III. C. 69., it has been enacted, “ That all officers, mariners, sol-
 “ diers and marines, who have been at any time employed in the service of
 “ his Majesty, and have not deserted the said service, and also the wives
 “ and children of such officers, mariners, soldiers and marines, may set up
 “ and exercise such trade as they are apt and able for, in any town or place
 “ within the kingdom, without any let, suit or molestation, of any person
 “ or persons whatsoever, for or by reason of the using of such trade.”
 There is here no limitation as to the place where King’s freemen are to ex-
 ercise their trades: they may exercise their rights within the limits of any
 corporation they please, their privilege being general. It cannot be neces-
 sary for them to restrict themselves to any particular place, to obtain the
 privilege of a statute, which was intended to prevent the operation of every
 exclusive privilege, that could injure them. There is a limitation as to the
 trades to be exercised, but none as to residence.

Answered: The privilege which the Legislature meant to bestow in re-
 turn for the services of soldiers and sailors, was, that they should enjoy a
 dispensation from the ordinary rules of admission into the different corpo-
 rations. But it never was intended that they should have any privilege be-
 yond the regularly admitted members of each corporation. When any per-
 son wishes to avail himself of these enactments, he must make choice of
 his trade, and can only enjoy the rights which belong to the trade to which
 he has attached himself. Now, it is almost universally required of every
 craftsman, that he shall reside within the burgh of which he is free, and
 exercise only one trade. To these regulations, the King’s freemen must al-
 so be subject; Muir against Macbean, 19th February 1793, No. III. p. 2004.

The Court altered the Lord Ordinary’s interlocutor, and found, That
 Chalmers had not acted illegally in employing Fleeming and Miller.

Lord Ordinary *Hermand.*
 Clerk, *Pringle.*

Alt. *Hamilton.*

Agent, *Bain Whyt, W. S.*

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Fac. Coll. No. 184. p. 412.

1808. June 10.

BAKERS OF HADDINGTON, against JOHN SMITH.

NO. 4.

THE Incorporation of Bakers of Haddington have by seal of cause the ex- A person not
 clusive right of the baker craft within that burgh-royal. John Smith was a member of
 the corpora-

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NO. 4. not a member of that Incorporation. He had a bakehouse in Nungate, which is without the limits of the burgh. From this bakehouse, he sent bread to those within the burgh who commissioned it from him, and some of these persons were retailers of bread within the burgh. The Incorporation of bakers, by their deacon and boxmaster, brought an action against him before the Sheriff, containing other matter, but chiefly concluding for having him prohibited from "*baking and selling* bread within the burgh;" under which terms it would seem they included the practice above mentioned. The Sheriff-substitute found, "That the Incorporation of Bakers of Haddington have the exclusive right of manufacturing and selling bread within the burgh of Haddington: That it is an encroachment on their privileges as a corporation, in an unfreeman to manufacture bread without the burgh, and to sell the same by retail, or to retailers within burgh, unless on the weekly market-day; and in respect the petitioners have averred, that the defender, an unfreeman, has been in the practice of selling bread manufactured by him without the burgh, not only to private families, but to retailers, and that every day in the week, and which averment the defender has not explicitly denied; finds, that he has thereby been guilty of an encroachment on the petitioners privileges as a corporation, and prohibits him in time coming from selling bread by retail, or to retailers, as aforesaid, within the said burgh."

(See APPENDIX, PART I. *voce* BURGH-ROYAL, NO. 22.)

The defender brought the interlocutor before the Court of Session by advocacy.

The Lord Ordinary reported the cause on informations.

The pursuers confined their argument to maintaining, that selling to retailers was the same thing with retailing; and that retailing within burgh by an unfreeman, who was also the manufacturer without the burgh, was contrary to the incorporate rights of the freemen.

The argument for the defender did not dispute the last point, but denied the first; and maintained that an unfreeman might deliver within burgh the articles he manufactured without, provided they were previously commissioned, and not brought in *to be* sold by him.

On advising the informations, with a condescendence and answers, in which it appeared that the above was the state of facts in the case, a great majority of the Judges expressed their opinion, that it was now settled law that an unfreeman might bring in the articles that were the subject of an incorporated craft, into the burgh, and deliver them to those who had previously commissioned them from him. That they could see no reason why he should not deliver them in this way to persons who retailed them on their own account, as well as to other people; and, further, see no reason why he might not do this in any quantity, or in the way of a regular supply, provided always he had no share himself in the retail of them.

The interlocutor of the Court (10th June 1808) was: "Sustain the de- NO. 4.
" fences, and assoilzie the defender."

Lord Ordinary, *Craig*. Act. *James Keay*. Alt. *Thos. W. Baird*. *D. Stewart* and
John Craw, W. S. Agents. Clerk, *Buchanan*.

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Fac. Coll. No. 51. p. 185.

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