

No 67.

cular grants, which is not the case here ; for it is not pretended that the brewers are a corporation or have a seal of cause.

' THE LORDS found that the magistrates had no power to make the act.'

*Sel. Dec. No 13. p. 15.*

1752. July 8.

No 68.

Freemen and burgesses of royal burghs, dealing in salmon, may employ unfreemen in making their barrels within burgh.

The CORPORATION of COOPERS in Perth *against* KEIR and Company.

THE corporation of Coopers in Perth exhibited a complaint to the Magistrates of Perth ; wherein they narrated, that one Davidson, an unfreeman, had encroached on the privileges of their corporation, by making salmon-barrels within the burgh ; and concluded, that he should be prohibited from so doing in all time to come.

Keir and Company (who had employed Davidson as their servant) insisted that they, as freemen and burgesses, were entitled to deal in the salmon trade, and consequently might either import barrels ready made, or employ within the burgh whom they pleased in making them : ' The magistrates nevertheless sustained the complaint, and prohibited Davidson from working in the cooper work within the burgh and liberty thereof, under the penalty of L. 5 Sterling for each transgression.'

Of this sentence suspension was obtained, and the case reported.

*Pleaded* for the chargers : Unfreemen are neither authorised by law nor custom, to exercise within burghs that craft which is peculiar to any of the corporations therein established, although their employers be freemen and burgesses, and the work so made be intended for exportation. The exportation of salmon is a branch of trade by law appropriated to the freemen of royal burghs ; and the legislature intended also that the barrels, used in the package of salmon so to be exported, should be made only by the coopers freemen in royal burghs : Hence, when regulations, establishing the size and form of such barrels, were introduced, and the observance of these regulations was enforced by certain penalties, the execution of the law was committed to the magistrates of royal burghs. This appears from act 33. Parl. 1. sess. 1. Charles II. Now, if the making of salmon-barrels by unfreemen, be tolerated within a royal burgh, it will be impracticable for the magistrates, or for the visiters by them appointed, to enforce the observance of the regulations aforesaid.

*Pleaded* for the suspenders : That the chargers have the exclusive privilege of making salmon-barrels within the burgh for sale, is not disputed : The suspenders only contend, that they, as burgesses and guild-brethren, may carry on the fishing trade and export salmon : That, as a right to the *end* implies a right to the *means* also, they are entitled to import salmon-barrels from without the burgh, or to employ their own servants, although not freemen, in making them within burgh.

Thus a burghess, who has right to keep an inn within a burgh, may, although no baker, bake the bread that is to be consumed by his guests; and yet were he to do it for sale without his inn, it would be justly deemed an incroachment on the privileges of the incorporation of bakers: Thus a craftsman, who, as a burghess, has right to keep an inn, may buy wine, although a foreign commodity, to be consumed in his inn; and this, without encroaching on that exclusive privilege of trading in foreign commodities which belongs to the corporation of merchants.

As to the act of Parliament on which the chargers found, it is answered, that the regulations therein expressed are general, and relate to the *whole coopers within the kingdom*; and all such, whether freemen or not, whether residing within or without royal burghs, are made subject to the penalties therein contained, if their work prove insufficient. It is true, that the act ordains *magistrates within the burgh to put the act in execution*; but that plainly relates to what questions may arise within the burgh; for the execution of the act is also committed to the Judge Ordinary: So that the whole that is intended is, that every judge should execute the act within his own jurisdiction; and therefore no argument can be drawn from this act in support of the sentence given by the magistrates of Perth.

Further, by indulging such ample privileges to the corporation of coopers, the fishing-trade, and the exportation of salmon, will be rendered more difficult and less beneficial; for, in the preparing of salmon, many things are required; they must be pickled, packed, and barrell'd up: Now, although it should be granted that the coopers of Perth were sufficiently skilled in the making of barrels, yet the pickling and packing of salmon is a distinct operation, and it would be highly inconvenient for the suspenders to be obliged to employ the coopers of Perth in one branch of the work, and their own servants in another.

'THE LORDS suspended the letters *simpliciter*.'

Reporter, *Kilkerran*.  
*Dalrymple*.

Act. *Lockhart*.

Alt. *Fergusson*.

Clerk, *Gibson*.

*Fol. Dic. v. 3. p. 107. Fac. Col. No 26. p. 46.*

\* \* \* Lord Kames reports the same case:

THE deacon and box-master of the wright-calling of Perth, of which the coopers are a branch, brought a process before the magistrates of Perth, against Richard Davidson and John Donaldson, both unfreemen, for having them debarred from exercising the cooper-craft within that burgh, in making barrels and kits. The defence made, was, That the defenders were hired servants to one of the fishing companies of the town of Perth, and employed by them to make barrels and kits for packing their fish. Compearance was also made for the partners of this fishing company, who being admitted for their interest, insisted, That, as burghesses of Perth, they were entitled to deal in this branch of foreign

No 68. trade, and consequently by themselves, or others employed under them, whether freemen or not, to make all such barrels and kits, as were necessary for packing the salmon to be by them exported: That, by so doing, they did not violate or encroach upon the seclusive privilege of this incorporation, which extend no further than to give a monopoly of making such pieces of work as are to be exposed to sale within the burgh; and can never be extended so as to debar them either from importing barrels and kits ready made, or from getting them made within the burgh for the use of exportation.

In support of this defence, a fact was alleged that occasioned a very long proof, namely, That the coopers of Perth were not sufficiently skilled in making barrels and kits.

The cause, with the proof, being reported to the Court, I gave my opinion, that though an unfreeman is not entitled to the benefit of the town-market, yet no law prohibits him to manufacture goods for exportation. And, in the present case, that I could not see a reason why the Company might not employ their own servants to make barrels, as well as to cure and pack their salmon. The President's opinion was, that wherever a society can import the materials or utensils of their manufactory, it can never be unlawful to employ their own servants to save importation.

'THE LORDS assoilzied; it being the opinion of the Court, that the society may employ their own servants.' And this opinion was given upon the abstract point, without regarding the proof.

*Sel. Dec. No 25. p. 17.*

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1752. December 26.

The TAXMEN of the TOWN of Edinburgh's Impost upon Wines, against Sir ROBERT MYRETON of Gogar.

No 69.

Impost granted to the town of Edinburgh, is payable on wine, &c. imported within the limits of the grant, though for private consumption.

IN April 1671, the town of Edinburgh obtained a grant from King Charles II. of an impost or duty upon certain wines and other foreign liquors; the grant proceeds on a narrative of the necessity of granting such impost, in these words: 'Adeo ut nisi prorogatio impositionis super vino, aliisque exteris commoditatibus importandis concedatur omni tempore futuro (magistratus) non solum incapaces reddentur sustinere communes sumptus negotiorum dictæ civitatis, sed necessario cogentur subjacere oneri eorum antiqui æris alieni,' &c. And the grant is in the following words: 'Dedimus, &c. Impositionem et custumam summæ duorum solidorum monetæ Scotiæ super unoquoque Scotico pincto vini Gallici; quatuor solidorum monetæ prædictæ super unoquoque Scotico pincto vini Hispaniæ et Rhenensis, *lie brandy wines* extranea aqua vitæ, aquis re-coctis, aliisque extraneis liquoribus distillatis; summæ duodecim denariorum monetæ Scotiæ super unoquoque Scotico pincto de, *lie mum*, et super unoquoque Scotico pincto extraneæ cerevisiæ et zythi; importand. et vendend. intra