

conventions with them ; and concluding against William Murray a forfeiture of his freedom, &c.

No 81.

‘ THE COURT found the agreement lawful.’

It is indeed unlawful for a freeman to protect an unfreeman, by enabling him to work within the town for the service of the market. But it is not unlawful for a freeman to join stocks with an unfreeman for the mutual benefit of both, more than to borrow money from an unfreeman. To prohibit such an agreement would be to favour the opulent of a corporation, by debarring others to aid themselves with the money of strangers.

*Sel. Dec. No 248. p. 320.*

1766. July 4.

JOHN GOODFELLOW, Watchmaker in Stirling, *against* The CORPORATION OF HAMMERMEN there.

JOHN GOODFELLOW, by profession a watchmaker, having come to Stirling to exercise that employment, and having, in consequence thereof, taken a house and shop, was soon thereafter informed by the deacon of the hammermen, and other members of that incorporation, that the trade of watchmaking within the royalty was confined to their corporation ; and that, therefore, he could not exercise that employment there without permission from them.

It appeared that John Goodfellow had a communing with the deacon and incorporation, and afterwards was admitted burgess *qua* hammerman, by which he paid but the half of what he would otherwise have paid, had he been admitted as a common burgess. But having refused to make an essay-piece in order to his being entered with the trade, although repeatedly ordered so to do, a complaint was exhibited against him before the magistrates of Stirling, at the instance of the Corporation, and his defences having been over-ruled, the following interlocutor was pronounced by them : ‘ Having considered the petition and representation, with the extracts of the hammermen-trade produced, with the defences and answers, and having also seen the council-book of the burgh, wherein the defender was admitted and sworn as a burgess *qua* hammerman of the said burgh, and, on that account, only paid L. 12 Scots of entry-money as a tradesman, which, had he entered an ordinary burgess, would have cost him L. 24 ; therefore repels the defences in respect of the answers, and the other reasons before mentioned ; and finds the defender cannot follow his business as a watch or clockmaker within the burgh, without entering with the trade, and appoints him, within a few days thereafter, to go on and finish his essay.’ And he having still delayed to make an essay-piece, ‘ they prohibited and discharged him from exercising any branch or part of the business peculiar to the hammermen craft within the burgh, while he continued unentered with them, under the penalty of five shillings Sterling, to be forfeited by him to the said craft, for each

No 82.

The privileges of the Corporation of Hammermen in Stirling, found not to extend to the exclusion of a watchmaker's working there, altho' he refused to enter a member of the Corporation.

No 82. trespass he shall be convicted of; and granted warrant to the officers of the burgh, jointly or severally, to secure and seize his tools and work, if he shall be found working, or servants under him, within the liberties of the said burgh, at clock or watchmaking, or other parts of the hammerman business, after he is charged to the above effect, so long as he continues unentered with the said incorporation, and to carry the defender himself before any of the magistrates to be examined thereanent, and be proceeded against and convict of such trespasses; finds the defender has been litigious in this process; and that he is liable in the pursuers' charges and expences, which modifies to the sum of L. 1 : 10s. Sterling money, for which decerns against the defender, and for the expence of extracting the decret.'

Of this interlocutor John Goodfellow obtained a suspension, and *pleaded, 1mo*, That the incorporation of hammermen in Stirling had usurped the privilege of an incorporation without any title; for neither had they been erected into a corporation by the town's charter, nor had they produced any seal of cause; and, therefore, the magistrates had done wrong in sustaining action at their instance. Every pursuer, before he can be heard even in a common cause, is obliged to produce his titles, to instruct that he has a right to what he claims; and, if such obtains in ordinary matters, *a fortiori* ought it to take place in the present question, where an exclusive privilege was attempted to be obtained, detrimental to the freedom of trade; and which privileges, even when legally founded, have for that reason been always most strictly interpreted. *2do*, Supposing the smiths of Stirling were allowed to assume the title of the incorporation of hammermen, yet it did not from thence follow, that the clock and watchmakers were part of their society. The only method by which an incorporation can be legally erected, and obtain exclusive privileges, is by the charter of erection of the burgh, containing a power to the magistrates to create and erect certain trades into incorporations, by a seal of cause. But, certain it is, that, at the time that the charter of erection was granted to the burgh of Stirling, no such privilege could be conferred upon any incorporation erected in that town, because it would not be disputed, that at that time the art of clock and watchmaking was not known in this part of the world.

*Answered* for the chargers, That, if the first reason of suspension was sustained, most of the incorporations in Scotland would be cut down, because many are the creatures of immemorial custom, and very many who once had seals of cause have lost them by length of time; and, as privileges may be acquired by usage or prescription; so, as they could show that the watchmakers had always been part of their incorporation, the not production of their seal of cause was no good reason of suspension, because, as far back as the 1616, it appeared, by an agreement between the merchants and trades of Stirling, signed by their then deacon, and several other members, that the deacon of the incorporation of the smiths signed, amongst the rest, which is a plain proof, that they were then an incorporation: *2do*, A condescence was produced, from which it appeared, that every watchmaker that has been in Stirling, from the

1698, down to the present time, had understood himself to be comprehended under this incorporation, and entered with it accordingly ; and even the suspender himself applied for leave to enter with this incorporation, obtained it, and, in order to complete his entry with the trade, got himself admitted to the liberty and freedom of a burgh, *qua* hammerman, took the burgh oath, and paid the dues of his entry, and thereby homologated the right which the chargers contended for ; but which, even without that, by the instances before mentioned, was sufficiently ascertained.

*Replied,* That in this case there could be no prescriptive right pleaded, because, from what was above set forth, the magistrates had no power to create and erect such an incorporation ; neither could the condescendence given in by the incorporation of hammermen have any weight ; because, although particular persons exercising the art of watchmaking may, for private reasons, have chose to have got themselves enrolled as members of the hammerman craft ; yet this could extend no further than to the person entered.

‘ THE LORDS suspended the letters *simpliciter*, and decerned.’

Act. *D. Armstrong.*

Alt. *Lockhart and Maclaurin.*

*Fol. Dic. v. 3. p. 107. Fac. Col. No 42. p. 74.*

1768. August 5.

LAWSON, JARDINE, and Company, Merchants in Dumfries, *against* ADAM THOMSON, Tacksman of the Meal Market there.

THERE is an unprinted act of Parliament dated 12th August 1662, of the following tenor : ‘ The estates of Parliament having heard a supplication, presented to them by the provost and bailies of Dumfries, for themselves, and in name of the said burgh, shewing, That the inhabitants of the said burgh and sheriffdom of Dumfries have been greatly damnified through the expences of the meal market being uncovered, to the great disadvantage of buyer and seller, and spoiling of the meal in wet and rainy weather ; humbly therefore desiring, that, towards the building and maintaining an fabric and cover on the said meal market, an imposition might be laid on each boll of meal, sold within the said burgh, as the supplication bears ; which, with an declaration under the hands of those who are members of Parliament, and who have interest in the said shire, consenting, that four shillings Scots be imposed upon the load of meal, sold in the said market, being taken into consideration, the King’s Majesty, with advice and consent of his estates of Parliament, do hereby grant warrant and power to the provost, bailies, and council of the said burgh, to build and cover a meal market, in the most convenient place within the said burgh they shall think fit, but prejudice of any private man’s interest in that place ; and, for the better bigging and upholding the same, gives war-

No 82.

No 83.

A duty granted upon what is to be sold in the market place, not to be eluded by selling elsewhere.