

No. 3.

Replied on the part of the pursuers:—This act of Parliament confers a privilege derogatory to common law, which has established corporations, who, according to their seal of cause, can insist that none within their limits shall carry on trade. That it is evident all personal privileges must be strictly interpreted, Erskine B. 1. T. 1. § 54. The laws establishing the rights of corporations are coeval with and part of our common law, therefore can not be admitted to be any exception to it. It is admitted that the defenders are married to the daughters of soldiers; but do the privileges extend to the sons-in-law of soldiers? The defenders will admit they are not mentioned in it. This being the case, they can claim no privilege under it. In regard to the argument, that this right is communicated by their wives, the preamble of this act shows perfectly the reverse, by enumerating the classes who are comprehended under it, viz. those who have been apprentices to trades, or have made themselves apt and fit for trades.—If then the wives of the defenders were not apt and able, by being bred to a trade, neither can they communicate to another what they themselves have not.

The legislature has confined this privilege to those soldiers, &c. who are apt and fit, consequently those who are not so can claim no privilege. It is evidently meant for the benefit of such persons as had exercised or could exercise a trade themselves. The defenders have given a strange latitude to the words *apt and fit*, when they contend that it is the same as being a superintendent over the work of another. This idea is contrary to the express words of the statute, and the plain sense of it; for were a woman entitled to carry on trade by others, why might not she carry on several? This would certainly enable any one to carry on any trade under their cover, which would go far to annihilate the privileges of corporations. In regard to the idea that the defenders are working as journeymen to their wives, it is too ridiculous to be argued upon.

The Lord Ordinary's interlocutor was in these words: "Having heard parties procurators in support of the charge, reasons of suspension, and the evidence produced for instructing that the suspenders are married to soldiers' daughters, and thereby entitled to the benefit of the statute, finds the letters orderly proceeded."

To this interlocutor the Court, after advising a reclaiming petition and answers, adhered.

Lord Ordinary, Stonefield. For the Pursuers, Craig. For the Defenders, B. W. M'Leod.

1777. June 14.

GEORGE DOVE, Taylor in Inverkeithing, against The MAGISTRATES and TOWN COUNCIL of the Burgh of INVERKEITHING.

No. 4.

A PETITION and complaint was given in to the Court of Session, in the name of George Dove, stating that he had been legally elected deacon of the incorporation of taylor's of the burgh of Inverkeithing, in the month of

Whether a person complaining in terms of the act 16. Geo.

No. 4.
2d. cap. 11.
of a wrong
committed at
the election
of Magi-
strates and
Councillors
of a burgh
be entitled
to his costs
of suit under
the statute,
the wrong
being redres-
sed before
judgment
comes to be
given by the
Court?

September 1776, but that the Magistrates and Town Council of that burgh had notwithstanding refused to admit him into the Council.

The ground of refusal was, that Dove had not brought sufficient evidence that James Inglis, (one of those who had voted against his election) was a minor; the only proof at first produced of this being a certificate from the Session Clerk; and that if Inglis was not proved to be a minor, Dove's election could not stand, as the casting vote was given against him at the election.

To remedy this defect of evidence, Dove produced an extract with regard to the minority of Inglis, signed by a Minister and two elders. The Council still seemed to think this insufficient, and appointed additional proof to be adduced. Dove consequently brought his complaint, but before judgment was given, the Council admitted him to take his place among them as deacon of the taylors. It came thus to be a question whether the complainer was entitled to his costs of suit, according to the act 16th Geo. II. The Court seemed to be of opinion that the Council had some reason to consider the certificate of the Session Clerk as not sufficient evidence of the minority of Inglis, and that the proof of his minority was entirely incumbent upon the complainer; therefore the Council, soon after the stronger evidence had been produced, viz. the extract signed by the minister and elders, had admitted Dove to his place of deacon. The Court were also of opinion that the statute did not apply to this particular case; and the following interlocutor, 14th June 1777, was accordingly pronounced: In respect that the complainer is now admitted deacon, and has taken his seat accordingly, Find that there is no occasion to judge on the merits of said competition, and therefore find that no expenses can be claimed under the act of Parliament, and decern.

Act. Blair.

Alt. Hay Campbell.

J. W.

1798. *November 21.*

ALEXANDER MUIR against WILLIAM KAY and Others.

No. 5.
The duty of
two pennies
on the pint of
malt liquor
granted to
the town of
Borrowstounness,
does not extend to porter
imported into the town
and harbour,
and after-
ward sold in
wholesale to
strangers.

THE town of Borrowstounness obtained, in 1774, an act of Parliament for levying a duty of two pennies Scots on the pint of ale and beer, for the purpose of repairing the harbour. The duty has been continued by two subsequent statutes, in 1767 and 1794; and by the former it is extended to the parish, as well as the town of Borrowstounness.

The terms in which the duty is imposed by these statutes are, "That there shall be laid an imposition or duty of two pennies Scots upon every Scotch pint of ale and beer that shall be either brewed, brought in, tapped, or sold, within the said town of Borrowstounness, or the liberties thereof, and that the said imposition or duty shall be paid, or made payable, by the brewers for sale, or venders or sellers of all such ale and beer."