

1802. *March 2.*

INCORPORATION of GOLDSMITHS of Edinburgh, *against CUNNINGHAM, and Others.*

No. 10.

Merchants are entitled to import and sell gold and silver-ware within the liberties of the city of Edinburgh, without becoming members of the Incorporation of Goldsmiths.

THE Incorporation of Goldsmiths brought an action of declarator against Alexander Cunningham, John White, and Francis Marshall and Sons, merchants in Edinburgh, to have it found that these persons, because they did not belong to their Incorporation, had no right to sell gold or silver ware within the city.

The Lord Ordinary ordered memorials upon the general question, how far the defenders were entitled to employ master tradesmen, not residing within burgh, and who were not members of the Incorporation of Goldsmiths, to execute work to be afterward sold in their shops within the city, and reported the cause. The Incorporation

Pleaded: That their right of exclusive sale was conferred on them by royal charter, and confirmed by many acts of Parliament, imposing various restrictions to prevent the lieges from being defrauded in an occupation of so much nicety; act 1483, C. 96. 1489, C. 13. 1555, C. 56. and 1587, C. 39; which last is a private act ratifying the privileges of the Incorporation. But, independent of express enactment, as they were admitted to have the sole right of manufacturing gold and silver, this right must, in the nature of the thing, imply in some degree an exclusive privilege of sale, otherwise it would be quite nugatory, and there would only be this difference between members of the Incorporation, and those who are not, That the one had their workshop within the royalty, and the other in the suburbs. For, if unfreemen be allowed to sell goods at all, it can make no difference in what place they procure them; *Cordiners of Glasgow against Dunlop and others, December 3, 1756, No. 72. p. 1948. Bakers of Edinburgh against Dowie, Dec. 4. 1783, No. 90. p. 1976.*

Answered: Every exclusive privilege is unfavourable to trade, and is therefore to be strictly interpreted in a commercial country. The right of the Incorporation of Goldsmiths must be confined to the manufacture of the commodity. Such privileges are never conferred by public laws. The statutes accordingly quoted by the pursuers, have no relation to their privileges as an Incorporation, but relate to the fineness of gold and silver ware exposed to sale in the kingdom. The privilege of exclusive sale conferred upon Incorporations, has long since gone into disuse, and is wholly inconsistent with the present situation of the country. The pursuers accordingly, if they ever possessed such a right, have not enforced it, and have lost it by disuse. The defenders are members of the guildry, and as such are entitled to import and to sell goods within the city; and if this privilege of exclusive sale were enforced by all the different Incorporations, their right as merchants would be altogether at an end. Accordingly, immemorially, goods of all sorts have been imported into the city, and sold by merchants from their warehouses, without

its ever being conceived to be inconsistent with the rights of the different Incorporations; Coppersmiths of Edinburgh against Aberdour, August 6, 1708, No. 84. p. 1966. No. 10.

The Lords found, That the defenders are entitled “ to import made articles of gold and silver work, and to sell and retail the same in the shops kept by them; but before answer, as to the right of the defenders to employ master tradesmen, or other persons not residing within the burgh, nor entered with the Incorporation of Goldsmiths, to manufacture or make for them articles of gold and silver work, and to inbring and sell the same in their shops within the city, remit the cause back to the Lord Ordinary, to hear parties farther thereon, and on any other points betwixt the parties, and to determine the same as to his Lordship shall seem just ”

And a reclaiming petition against this interlocutor was refused without answers.

Lord Ordinary, *Cullen*.
Alt *Robertson*.

Act. Lord Advocate *Hope, Reddie*.
Agent, *Ja. Gibson, W. S.*

Agent, *W. Walker, W. S.*
Clerk, *Menzies*.

J.

Fac. Coll. No. 29. p. 59.

1802. *June 15.*

The INCORPORATION of FLESHERS of Glasgow, *against* The MAGISTRATES.

IN the year 1744, the Magistrates and Town-Council of Glasgow erected a slaughter-house, adjoining to the city, for the accommodation of the butchers; and by an act of council, it was appointed, that those of them who made use of that place should pay a certain rate, in proportion to the numbers of cattle that might be slaughtered. And in the year 1755, a set of public markets were erected for the accommodation of the inhabitants, in which places were appropriated for the sale of the different articles of provisions. The Magistrates, by an act of council, (8th Dec. 1755), made certain regulations with respect to the rents and duties to be paid for these slaughter-houses and markets by the town butchers who were to use them both; and by the country butchers who might expose their vivres in the market. These duties were levied upon each head of black cattle, and each dozen of small cattle that might be exposed to sale; and this regulation was intimated to the butchers. The rents and duties then fixed were acquiesced in, and have been regularly levied ever since by the Magistrates.

Matters continued in this situation till the year 1799, when the Magistrates, by an act of council, (16th May), raised the dues of the beef and the mutton markets one-third more than the former rate, reserving to themselves to augment this rate, after the expiry of a year, if they should conceive it expedient. The Incorporation of Fleshers presented a bill of suspension, on being charged

No. 11.
Stall-rents, or dues for accommodation in the market-place, having been fixed by an agreement, cannot be raised at the pleasure of the magistrates.