

S E C T. VII.

Powers and Privileges of Corporations.—Employment of the Funds.

1752. *July 8.* The COOPERS in PERTH *against* DAVIDSON and Others.

NO 112.

The privileges of corporations will be interpreted, so that they will not be allowed to interfere with undertakings of great public utility.

THE fishing company in Perth having contracted with Davidson and others, coopers, but not freemen of the burgh, to make the barrels and other vessels for the use of the company, the Corporation of Coopers brought a process before the magistrates of Perth for having them debarred from usurping the privileges of the corporation. In which process, compearance was made for the fishing company, who *pleaded*, That as burgesses of Perth, they were entitled to deal in this branch of foreign trade, and consequently could, by themselves, or others employed by them, whether freemen or not, prepare and make all such barrels and other vessels as were necessary for exporting their salmon : That the exclusive privilege of the corporation went no farther than a monopoly of making such pieces of work as were to be exposed to sale within the burgh, but could not be extended so far as to debar them either from importing barrels ready made, or from employing any skilful persons, freemen or not, to make such barrels and vessels as were necessary for carrying on the trade which they were entitled to deal in.

As this defence imported an acknowledgement of the facts libelled, and as the fishers had failed in the proof which the Magistrates had allowed them, of the coopers of Perth being insufficient tradesmen, the Magistrates found, ‘ That the defenders had encroached upon the privilege of the wright calling, and therefore did inhibit and discharge them in all time coming from working in the cooper trade within the burgh or liberties, under the penalty of L. 5 for each transgression.

Of this decree the defenders having obtained suspension, and the Ordinary having reported the debate, the LORDS at discussing, by a great plurality, found ‘ That the fishing company, the suspenders, were at liberty to employ their own servants in making casks and barrels for curing the salmon exported by them.’

The minority were not displeased with the Court’s so finding, as it were to be wished that corporations had no such exclusive powers; but they doubted of the point of law : They thought the company could not employ their servants to make the casks, more than they could make the casks to be sold in the town of Perth : And they put the case of persons making a trade of exporting empty casks, and asked, If it were pleadable that they could employ their own servants to make such casks?

The suspenders in their information had referred to the case of Tenant, No 65. p. 1934. and to the case of Buntein and Flockhart, vintners in Dun-

fermline, No 62: p. 1926. 26th January 1743. But it was not by any of the Lords said that these cases were any ways similar to the present case; they could only apply where the casks were made for curing fish for the use of the families of the persons who cured them. See No 68. p. 1938.

Kilkerran, (BURGH ROYAL.) No 9. p. 112.

No 112.

1776. December 4. CROOKS against TURNBULL.

THE incorporation of Weavers of Rutherglen obtained, in 1641, a seal of cause, or letter of deaconry, containing various regulations respecting apprentices, and the admission of freemen. The deacon and masters of the craft had, by the seal of cause, a power of making all other acts and statutes, relative to the good government of the craft. In consequence of the entitling soldiers to set up and work as freemen in any royal burgh, a great many became weavers in Rutherglen, and took apprentices on much easier terms than those of the established corporation; who thereupon thought it proper to relax and alter the regulations, established by the letter of deaconry from the magistrates, both with respect to the time of service of apprentices, and their dues of admission. In a reduction brought of the admission of certain freemen, the pursuers insisted for having the regulations established by the letter of deaconry, declared and adhered to in all time coming.—THE LORDS found, That the letter of deaconry could not be rescinded or altered, by any act of the incorporation, without consent of the magistrates and council.

No 113.

The seal of cause, or letter of deaconry of a corporation, cannot be rescinded or infringed by the corporation, without consent of the magistrates and council.

Fol. Dic. v. 3. p. 103.

1785. June 18.

THE CORPORATION OF WEAVERS in the TOWN of CUPAR, against DAVID WILSON, and Others.

THE Corporation of Weavers in the burgh of Cupar, enacted, That, no freeman should undertake to teach his art to apprentices who did not become members of the corporation.

David Wilson and others having transgressed this regulation, were fined by the bailies. In a suspension, they urged the act 24th of his late Majesty, by which it is, *inter alia*, provided, ' That every weaver or manufacturer of linen, flaxen, or hempen cloth, shall, and may, and is hereby authorised to exercise the said respective trades within any city, town, corporation, burgh, or place in Scotland, without any let or hindrance, from any person or persons whatever, and without being chargeable or charged with payment of any entry-money or other duty whatever, for or in respect of their following such trade or business.'

No 114.

The act 24th Geo. II. c. 31. permitting the exercise of the trade of weaving in towns to unfreemen, does not infringe the authority of the corporation over its own members.