

1761. June 13.

NINIAN CRAWFURD, Boxmaster to the Trades in Saltcoats, *against* SAMUEL MITCHEL, Shoemaker in Saltcoats.

No 77.

Tradesmen forming themselves into societies, are not incorporations, and have no *persona standi*.

IN the year 1725, a number of tradesmen of different crafts in the town of Saltcoats, which is a burgh of barony, entered into an agreement, by which they associated and incorporated themselves together. They resolved to have a stock-purse. They created a deacon or boxmaster, and appointed one to be chosen yearly : They obliged themselves to meet quarterly, and that any person who should fail to attend any meeting should be fined sixpence : They determined, that certain sums should be paid into the box by every member at each quarterly meeting ; and that every one who entered apprentice should also be obliged to pay a certain sum to the box ; and they enacted, that any person who should come from another parish and dwell in the town of Saltcoats, should be obliged to subscribe to the association, and pay a certain sum into the box. And the agreement bore, that the subscribers were witnesses to one another's subscriptions.

This agreement was approved of by the Earl of Eglinton, the superior of the town.

In the year 1740, Samuel Mitchel settled at Saltcoats, and subscribed the agreement : Some years after he refused to attend the meetings, or to pay the usual contributions ; upon which a process was brought against him before the baron-bailie of Saltcoats, at the instance of Ninian Crawford, as boxmaster to the trades of Saltcoats, in order to oblige him to pay, *1mo*, the arrears of his quarterly payments ; *2do*, Fines for his absence at sundry meetings of the trades ; and, *3tio*, The dues payable for an apprentice and journeyman.

The baron-bailie pronounced decret against Mitchel ; upon which the matter came before the Court of Session by suspension, in which the suspender principally insisted, that this was no legal corporation ; and consequently their boxmaster had no title to pursue in their name.

Pleaded for the charger, That a contract, entered into for lawful purposes, with the consent of the superior, is certainly binding ; and although the trades of Saltcoats cannot properly be called a legal corporation, as being destitute of the authority of King or Parliament ; yet it cannot be disputed, that private persons may enter into a society for lawful purposes without any such authority : That this society was not only lawful, but had been highly useful, as, by means of it, trade had been improved, and the poor supported in various instances.

The suspender having signed the agreement, is obliged to fulfil it ; and every partner of a society is entitled to pursue any other of the partners for implement of the obligation he has come under. The charger therefore is entitled to insist in his own name ; and his title is surely not the worse that he is authorised by the rest as boxmaster to pursue in their name as well as his own.

Pleaded for the suspender: All such societies as this, entered into without public authority, are held to be unlawful combinations; from which it follows, that the trades of Saltcoats can claim none of the privileges enjoyed by corporations; that they have not *persona standi in judicio*; nor can their boxmaster sue in their name.

That the present action is carried on by Crawford solely as boxmaster, and not *tanquam privatus*, appears from the libel.

2do, Et separatim, it was *pleaded*, That whatever effect this bond might be supposed to have *quoad* the original subscribers; yet it is not binding upon the defender, in respect it is not a valid deed, as wanting both the date of his subscription, and the names and designations of witnesses thereto, which are essential requisites to all written obligations.

' THE LORDS suspended the letters *simpliciter*.' See SOCIETY.

Reporter, Lord Auchinleck. Act. Nairn. Alt. W. Wallace, junior. Clerk, Kirkpatrick.
Fol. Dic. v. 3. p. 110. Fac. Col. No 33. p. 62.

1762. November 23.

ROBERT WHYTE Taylor in Glasgow, *against* The DEACON and MASTERS of the Taylors of that Burgh.

ROBERT WHYTE, a freeman of the taylor-trade in Glasgow, did for some years, confine his work in a great measure to the making of plaiding hose, and that chiefly to be exported to foreign parts; and in this work he frequently employed women.

The deacon and masters of the taylor-trade called the said Robert Whyte before them, and fined him for employing women in this business; and also pursued him before the trade's bailie, who also fined him, because it was alleged, that the employing of women, and others who were not freemen, in branches of the taylor-trade, was contrary to the acts of the incorporation, particularly one made on 7th February 1758.

As Robert Whyte was daily harassed by proceedings of this kind, he presented a bill of advocation to the Court of these summary processes; and he also raised a process of reduction of the decreets above mentioned, pronounced by the deacon and by the trade's bailie, and also of all the acts of trade upon which they were pretended to be founded.

In these processes, which were reported to the Court upon memorials, he *pleaded*,

imo, That the business of making plaiding hose, to which he has for many years confined himself, and for which only he met with the prosecutions now complained of, is truly no branch of the taylor-trade.

No 78.

A tradesman in a burgh may employ women, and other persons who are not free in the burgh, in any branch of his trade.