

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 burghess, *qua* hammerman, took the burghess 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 condescence 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.

No 83.

‘ rant and power to the magistrates and council foresaid, and their successors, and such as they shall appoint, to uplift and collect four shillings Scots of custom, for ilk sack and load of meal, brought to the said market, to be sold therein, in all time coming, as well from freemen inhabitants of the said burgh, as from strangers, importers thereof by sea and land.’

The pursuers having imported a considerable quantity of meal, and sold it in their ware-houses, the defender pursued them before the magistrates, for payment of the duty, and obtained decree.

The pursuers brought a reduction of that decree, and *contended*, That by the act of Parliament, the duty could only be exacted for meal sold in the market place, and that this limitation deserved the more regard, that it appeared to have been made on purpose, and in opposition to the request of the magistrates, for a duty upon all meal sold within the burgh.

Answered, The magistrates have been in the constant and immemorial practice of obliging the inhabitants either to bring the meal to the market place, or of making them pay the duty, if allowed to sell the meal in their own ware-houses.

Observed from the Bench : As the town was at the expence of rearing and maintaining the market place, it were hard upon them, and indeed to circumvent the law, to allow selling elsewhere, without paying duty ; a duty on what should be brought on the market day, could not be eluded, by fetching in a day before.

‘ THE LORDS repelled the reasons of reduction, and assoilzied.’

Act. <i>M'Kenzie</i> .	Alt. <i>Crosbie</i> .	Clerk, <i>Kilpatrick</i> .
<i>A. Rolland</i> .	<i>Fol. Dic. v. 3. p. 110.</i>	<i>Fac. Col. No 81. p. 145.</i>

1768. August 6. COPPERSMITHS OF EDINBURGH *against* ABERDOUR.

No 84.

IN an action brought by the Coppersmiths of Edinburgh against James Aberdour, the LORDS found the defender entitled to import and sell coppersmith work, if not manufactured within the royalty.

Fol. Dic. v. 3. p. 108.

1771.

WRIGHTS OF HADDINGTON *against* BEGBIE.

No 85.

THE LORDS found, that a person who was not entered in the incorporation of wrights, was not entitled to mend a cart wheel within burgh, though it was urged that a cart-wright and a wright were separate trades.

Fol. Dic. v. 3. p. 106.