

act to have been otherways, still it was not in the power of a few craftsmen who happened at the time to be members of this corporation, to alter its very constitution; at least it was not in their power to deprive of their privileges freemen already admitted, or to preclude the sons or sons-in-law of freemen from being afterward admitted, such persons having a right thereto *de jure*, and not one dependent on the will and pleasure of the corporation. At any rate, the successors of the members of 1739, were possessed of as ample powers as their predecessors, and that act is repealed and rescinded by an act of the incorporation dated 2d November 1770.

It was also urged, that however singular this usage might appear, it was very beneficial to the incorporation. Their charity funds were thereby greatly increased, without an equivalent increase of the numbers of their poor; as none but persons in easy circumstances ever think of paying for admission into a corporation, when they do not exercise its proper trade or craft. Without such a practice, besides, the corporations in this little town would be in danger of becoming extinct altogether.

For the defenders it was argued, that the act 1739 does not appear to have been in disuse, or tacitly repealed by a contrary practice.—The proof brought by the pursuers themselves resolves chiefly into an attempt to prove a kind of general practice in the other incorporated trades of admitting unhandycraftsmen, but by no means establishes that any such practice took place in the incorporation of hammermen, till within these few years past.

It is not to be denied, with regard to the act 1770, that a corporation has power to alter former regulations, regarding its own police, provided such alterations are not inconsistent with the general law of the country, or adverse to the particular constitution of the corporation, and provided such alterations be made in a regular and proper manner. But that a salutary regulation, such as that of 1739, excluding unhandycraftsmen from the privilege of voting at elections, can be repealed by a meeting of such unhandycraftsmen themselves, whom it was meant to exclude, is altogether impossible. And yet from the proof it appears, that the act 1770 was brought about in this manner.

It was observed from the Bench, that practices of this kind would wholly overturn the nature of corporations, and the Court accordingly (13th December 1776,) pronounced an interlocutor, “Adhering to the judgment of the Lord “Ordinary.”

Lord Ordinary, *Kennet.* Act. *Rae.* Alt. *Wright*

J. W.

1777. *March.*

INCORPORATION of TAYLORS in GLASGOW, against HUGH M'KECHNIE and Others.

HUGH M'KECHNIE and Christopher Jaes being married to the daughters of soldiers, began to carry on trade as taylors in the Town of Glasgow.—An action

No. 2.

No. 3.

Whether the statute 3d, Geo. III.

No. 3.
C. 8. entitles
the husband
of a soldier's
daughter to
carry on trade
within burgh,
notwith-
standing the
privileges of
incorpora-
tions?

See 118,
2014.

was brought against them, before Judge Ordinary, by the incorporation, as encroaching upon their privileges.

Pleaded for the defenders, (against whom the Judge Ordinary had decided, and who had brought the cause before the Court of Session by suspension);

By the statute 3d Geo. III. it is enacted, "That all such officers, soldiers, or mariners, who have been at any time employed in the service of his late Majesty, or of his present Majesty, since the 29th November 1748, and have not since deserted the service, and *also the wives and children of such officers, soldiers, or mariners*, may set up such trades as they are apt and able for in any town of Great Britain or Ireland, without any let, suit, or molestation of any person or persons whatsoever for or by reason of using such trade." That this statute is evidently meant as an encouragement for those who venture their lives in the service of their country, therefore it is entitled to the most ample and liberal interpretation. At common law, every person is entitled to carry on what trade or occupation he pleases. The exception to this rule in favour of incorporated bodies of men, took its rise in times of anarchy, and ought not to meet with encouragement at this period of time. From the preamble of the statute, it would appear that the Legislature only suspended some local exemptions in favour of those who served their country. Their right to set up any trade was not only conformable to common law, but beneficial in its consequences to the public, as it is in part doing away the monopoly of corporation-rights.

As the statute extends the privilege to soldiers, their wives, and children, the defenders being the sons-in-law of soldiers, are entitled to the benefit in their own right, and their wives, who confessedly had the right themselves, have communicated it to them by marriage. The word *children* may comprehend those by affinity as well as consanguinity; and this benefit, like the wife's dower, should become the husband's property, being intended for the same purpose. By the practice of most incorporations, the husband of the widows or daughters was entitled to be admitted on easier terms, which was quite analogous to the defender's case—*Idly*, The defenders wrought for the behoof of those entitled to the benefit of this act.

In regard to the words *apt and able*, which occur in the enacting clause, it is sufficient if the wives do assist their husbands in the work, which they do in the present case; and secondly, these words did not hinder those entitled to the benefit, from carrying on their work by others if disabled themselves. No work can be carried on to any extent without the aid of journeymen, and it is well known that the widows of tradesmen do carry on business which they themselves are incapable of. It is therefore a fair interpretation of this statute, that a soldier's daughter may carry on trade by journeymen, and if so, why not by her husband? Were the defenders dead, their wives might exercise their privilege; and it is absurd to suppose that marriage should put them in a worse situation.

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.