

count the corporation of that craft preferred to the magistrates a complaint against him.

In a process of advocacy, it was

*Pleaded* for Elisabeth Macmartin: The statute of 3d Geo. III. has enacted, 'That all such officers, soldiers, &c. who have been employed in the service of his Majesty, and also the *wives* and *children* of such officers and soldiers, may set up and exercise such trades as they are *apt and able for*, in any town within the kingdom of Great Britain,' &c. Now, as it is obvious that none of the handicrafts which come under the exclusive privileges of corporations either in England or Scotland, are such as women can be presumed 'apt or able' to perform with their own hands, the privilege thus conferred on the wives and children of soldiers, must be that of employing other persons to execute work *bona fide* for their behoof. The defender is therefore well intitled to exercise this trade by means of her husband.

*Answered*: In the preamble of the statute, those soldiers who are to enjoy the privilege bestowed by it, are described as at least 'apt and able' to make use of the respective trades; but according to the defender's plea, their wives and children would be more privileged than they themselves. It is evident besides, that were this interpretation of the statute to be sanctioned, it would give such opportunities for collusive devices, that the whole benefit of incorporated trades would be annihilated.

The LORD ORDINARY found, that the defender had no title to the privilege claimed by her; and

The Court adhered to that interlocutor, on advising a reclaiming petition, with answers.

For the Corporation, *Drummond*. Alt. *Dean of Faculty*. Clerk, *Menzies*.  
*Stewart*. *Fol. Dic. v. 3. p. 105. Fac. Col. No 120. p. 232.*

1793: February 19. MUIR and Others *against* MACBAIN and Others.

No 120.

THE LORDS found, That disbanded soldiers had no right to exercise a plurality of crafts within burgh.

*See* The particulars, No 111. p. 2004.

1795: December 17.

JAMES MANSON, Treasurer of the Guildry, and JAMES MILLER, Procurator-fiscal of the Dean-of-Guild-Court of Perth, *against* JAMES MACDONALD.

JAMES MACDONALD, a journeyman wright, married the daughter of a soldier, who, after her marriage, set up a small shop in Perth, in which she retailed bread, barley, and small groceries.

No 121.  
The daughter of a soldier, although married to a person not a member of the

No 121.

Guildry, may  
retail grocer-  
ies within  
burgh.

The Guildry brought a complaint before the Dean-of-Guild and his counsel against Macdonald, stating, that the trade was carried on by his wife, for his behoof, and concluding, that he should either enter with the Guildry, or pay the annual composition exacted from unfree traders.

The Dean-of-Guild found ' that the defender's being married to a discharged soldier's daughter, does not entitle him to the privilege of trading within burgh, and therefore fined and amerced him in the sum of 30s. Sterling, to be paid to the Guild Treasurer for behoof of the guildry.'

Macdonald brought this judgment under review, by advocation; and

*Pleaded*: The statute 3d Geo. III. c. 8. enabling the children of soldiers to trade within burgh, does not deprive their daughters of that privilege upon marriage. Perhaps they cannot communicate it to their husbands, so as to entitle them to carry on trade in their own name, but it does not follow that they may not themselves exercise any business for which they are qualified.

*Answered*: The defender is attempting to shelter himself under his wife's privilege. She cannot carry on trade but for his behoof; her whole moveables belong to him *jure mariti*, and by her conducting the business, with his knowledge, he is liable for every obligation she comes under respecting it. If the defender's plea were supported, it would afford a pretence to persons married to the widows or daughters of soldiers to carry on almost every trade in name of their wives, there being few which a female may not superintend; especially as the statute, although it gives the privilege of exercising only those trades which the persons favoured by it 'are apt and able for,' does not require that, before setting up, they should undergo any trial as to their knowledge in the branch which they intend to follow. Defences, similar to the present, have accordingly been uniformly repelled; 25th March 1777, Taylors of Glasgow against Mackechnie, No 118. p. 2014.; 24th February 1790, Corporation of Shoemakers in Perth, No 119. p. 2014.

The LORD ORDINARY 'assoilzied the defender from the action, and found the pursuers liable to the defender in the expence of extract.'

On advising a reclaiming petition and answers, it was

*Observed* on the Bench: In cases of this sort, a distinction is to be made between occupations exercised for the most part by men, and those which are frequently carried on by females. When the daughter of a soldier engages in the former, it will, in general, be presumed, that she is attempting collusively to communicate to her husband a privilege personal to herself; but in the latter, there is no room for the presumption. In this case, therefore, the interlocutor of the Lord Ordinary is clearly right. It is to be regretted, however, that the statute does not specify precisely the trades which the widows and daughters of soldiers may exercise after marriage, as it may often be difficult to draw the line.

THE COURT unanimously 'adhered, and found the pursuers liable in the expence of the answers.'

Lord Ordinary, *Justice-Clerk*.  
*R. Davidson.*

Act. *R. Craigie.*

Alt. *L'Amy.*

Clerk, *Home.*

*Fac. Col. No 192. p. 464.*