

June 21. 1825. therefore I cannot help thinking, under all the circumstances of this case, your Lordships are bound to affirm the judgment of the Court of Session.

SPOTTISWOODE and ROBERTSON—MUNDELL,—Solicitors.

No. 45. JOHN GRAHAM, Writer to the Signet, Appellant.

KEEPER, DEPUTE-KEEPER, and COMMISSIONERS of the SOCIETY of Writers to the Signet, and the TREASURER and PROCURATOR-FISCAL of that SOCIETY, Respondents.

Title to pursue—Corporation—Writers to the Signet.—An action having been brought by the keeper and depute-keeper of the signet, and of the commissioners, treasurer, and procurator-fiscal of the corporation or society of clerks or writers to the signet, (but not setting forth that they pursued on behalf of the society), against a member of the body, to have it found that certain rules were legal and proper; that effect should be given to certain proceedings by them against that member for alleged infraction of the rules; and that they had power to suspend him from or deprive him of his office; and the Court of Session having sustained the title of the pursuers to sue, and decerned in terms of the libel;—the House of Lords reversed, and assoilzied the defender.

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1ST DIVISION.
Lord Alloway.

ORIGINALLY the office of keeper of the signet was vested in the Secretary of State, but latterly the offices were in general kept separate. By the commission there is conferred on the keeper, ‘dictum locum munus et officium custodis dicti signeti cum omnibus feodis, proficuis, beneficiis, casualitatibus, libertatibus et immunitatibus, ad dictum locum et officium legitime spectan. et pertinent.’; but nothing is said as to a power to incorporate.

The writers to the signet were clerks in the office of the Secretary of State, and were prohibited from engaging in the business of ‘procuratoris, agentis, nor ordinarie servandis to the Lordis of Sessioun or men of law, or exerce ony othir particulare office in hurt and preiudice of the rest of the brethrene and general office. Bot that the sadis writeris, and ilk ane of yame, sal be friemen, keep oppin buithis, speciallie await and attend upon yair buithis and vocation, and naways be subject to ony uther particulare service or servitude of ony persones, under the pane of deprivation.’ In the progress of time, however, they began to perform their business in their own private offices, and acquired the privilege of acting as agents before the Supreme Court, which had been previously confined to advocates’ clerks. They are admitted by virtue of a commission granted by the keeper, who, in more ancient times, was in the practice of limiting the number. As clerks to the signet, they have the exclusive

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right of framing all writs passing under the signet, and drafts of all deeds to which the seals require to be appended. From the nature of their occupations they soon began to be extensively employed as conveyancers; and at the present day, the body of writers to the signet practise both in that capacity and as agents; but so far as regards their characters as agents and conveyancers, they possess no exclusive privileges.

The keeper appoints a deputy-keeper, and a certain number of the body as commissioners; and the commission which is granted to the latter proceeds on the narrative, that ‘ it belongs to me, as
 ‘ keeper of the said signet, to admit clerks to the signet, and to
 ‘ restrain and punish abuses, informalities, and disorders which
 ‘ may happen among clerks to the signet; for which end, it has
 ‘ been the constant custom and practice of the principal keepers
 ‘ of his Majesty’s signet to grant commission to a certain number
 ‘ of the clerks to the signet. Therefore, pursuant to this laud-
 ‘ able custom, I, as principal keeper foresaid, do, by these pre-
 ‘ sents, give full power and commission to,’ (then follows the com-
 missioners’ names), ‘ with the deputy-keeper, to be commissioners
 ‘ for the clerks to the signet, or to any five of them, the said
 ‘ deputy-keeper being always one, to convene as often as they
 ‘ shall think fit, and to take order with all abuses, falsities, and
 ‘ informalities, in their vocation already committed, or which
 ‘ shall happen to be committed by any member thereof, masters
 ‘ or servants, and to punish the same according to the acts made
 ‘ by former keepers and commissioners to the signet, for the good
 ‘ of the calling; which I do hereby ratify and confirm.’ The duties thus conferred are exercised by the commissioners alone. No charter of incorporation had ever, as far as could be discovered, been granted to the writers; and although by-laws were frequently made, yet they derived their authority from the keeper, acting under the advice of the commissioners. Accordingly, at an early period various regulations were made by him, both in relation to their private and public conduct. Thus, in 1656, he ordained
 ‘ that no writers to the signet in time cuming tak up publick ta-
 ‘ vernes, or oppen inne-houses for selling of meat and drink, an
 ‘ that thes who alreadie keep such tavernes and innes discharge
 ‘ themselfs betwixt and Mertemes next, under the payne of
 ‘ deprivatione.’ Again, on another occasion, he declared, that
 all ‘ wryters to the signet tak care for the future that all wryts
 ‘ be correctlie written, without blotting, razeing, or vitiacione.’ Among other regulations which were established, was one dated 22d January 1666, by which they were prohibited ‘ to acknow-

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' ledge or own any person or persons whatsoever as their servants
 ' or prentices, but such only as in very deed and truth, without
 ' all fraud or collusion, are their real and actual prentices and
 ' servants, actually residing and writing in their chambers, whose
 ' writings and employments, whether come in by themselves or
 ' their masters, redound wholly to the profit and benefit of their
 ' masters, except the usual drink money; and likewise discharge
 ' and prohibit all the said writers, and every one of them, to
 ' make any paction or bargain with any agents, clerks, ser-
 ' vants, notars, and others, dependers on the College of Justice,
 ' or any in their names, for writing of their employment, during
 ' any set time, for pensions, or at base and naughty prices, be-
 ' neath the ordinary price now in use, to the prejudice and
 ' contempt of the calling.' And with regard to all such as
 transgress or contravene any part of, the premises, they ' shall
 ' pay for the first fault, to the treasurer of the calling, for the
 ' use of the poor thereof, the sum of L. 40 Scots; and for the se-
 ' cond fault, shall be deprived from their offices simpliciter. And
 ' for the more effectual and vigorous execution of this act, it is
 ' of consent of the whole body declared, that it shall be leisome
 ' to the procurator-fiscal, in all complaints to be founded upon
 ' the contravention or the breach of this act, to refer the samen to
 ' the delinquent's oath of verity, when he wants other probation;
 ' and that they being lawfully cited by the ordinary officer,
 ' personally apprehended, to compear before the commissioners
 ' to answer to the complaint, and failzieing to compear, or,
 ' compearing, refuse to depone or purge themselves by their
 ' oaths, which oath they of their consent hereby allow the com-
 ' missioners to administer, they shall be holden as confest, which
 ' shall be as sufficient as if the complaint were proved by
 ' write or witnesses; and ordain all the present writers present-
 ' ly to subscribe this act and testimony of their assent and
 ' submission thereto; and that all the entrant writers sub-
 ' scribe the samen at their admission, that it may have perpetual
 ' observance, as that which so much concerns the good and weal
 ' of the calling; and ordain that every writer have a copy of thir
 ' presents, under the clerk's hands, affixed publickly in their
 ' chambers, that they nor their servants may not pretend ig-
 ' norance thereof.' By the present printed acts and regula-
 tions, the following rules are established: 1. ' That no clerk to
 ' the signet shall own or acknowledge any person as his appren-
 ' tice or clerk, but such only as, in very deed and truth, without
 ' fraud or collusion, is his real actual apprentice or his clerk, and

‘ actually attending and writing in his chamber.’ 2. ‘ That June 21. 1825.
 ‘ no clerk to the signet shall subscribe any bills, summonses, let-
 ‘ ters, signatures, precepts, services before the macers, or other
 ‘ writs peculiar to the clerks to the signet, but such as are drawn
 ‘ or written by themselves, or their actual apprentices or clerks
 ‘ by their directions, except when they sign for an absent brother,
 ‘ as before directed, and except bills of advocacy and suspen-
 ‘ sion, and all ordinary summonses which do not pass upon bills.’
 3. ‘ That every clerk to the signet shall take the full fees by law
 ‘ established, and no less, for signing letters and other writs pe-
 ‘ culiar to his office, except such signet letters as, being signed by
 ‘ one of the ordinary writers for the poor, are to be gratis.’ 4.
 ‘ That no clerk to the signet shall make any paction or bargain
 ‘ with any person or persons whomsoever, directly or indirectly,
 ‘ to subscribe any bills, letters, or other writs peculiar to the
 ‘ clerks to the signet, for less prices than those by law established,
 ‘ and shall not give back any part thereof, either by way of grati-
 ‘ fication, or any other manner of way which may elude the true
 ‘ intent and meaning of these regulations.’ 5. ‘ That in case any
 ‘ clerk to the signet shall transgress or contravene any of the pre-
 ‘ ceding regulations in this chapter, he shall, for the first offence,
 ‘ pay L.5. sterling to the treasurer of the society, for the use of
 ‘ the poor, and for every subsequent offence shall be suspended
 ‘ from his office.’

In 1800, the appellant John Graham was, after an examination, admitted a writer to the signet, by virtue of a commission granted by the late Lord Melville, keeper of the signet, and which proceeded on the narrative, that he had the ‘ power and
 ‘ right to admit writers to the signet;’ and therefore he nominated and presented ‘ the said John Graham to the said office of
 ‘ writer to the signet.’ Accordingly, Graham paid the usual dues, subscribed the above regulations, took the oath de fidei, and thenceforth acted in this capacity. In the month of February 1821 Mr Richard Mackenzie, procurator-fiscal for the society, presented a petition and complaint to the keeper and commissioners, in which, after founding on the above regulations, he set forth, ‘ That John Graham, writer to the signet, has, within the
 ‘ last four months, been guilty of contravening the foregoing regu-
 ‘ lations; and in proof thereof the complainer now condescends
 ‘ and offers to prove the following facts:—1st, The said John
 ‘ Graham owns or acknowledges eleven different persons as his
 ‘ apprentices or clerks, while the fact is, that not one of them is
 ‘ in very deed and truth, without fraud or collusion, his real

June 21. 1825. ‘ actual apprentice or clerk, and actually attending and writing
 ‘ in his chamber; or at least, several of the said apprentices or
 ‘ clerks, so owned or acknowledged by the said John Graham,
 ‘ are not in very deed and truth, without fraud or collusion, his
 ‘ real actual apprentices or clerks, and actually attending and
 ‘ writing in his chamber. 2d, The said John Graham has,
 ‘ within the last four months, subscribed a great number of sig-
 ‘ net letters, which were not drawn or written by himself, or his
 ‘ actual apprentices or clerks by his direction; and in particular,
 ‘ in the period between the 1st and 31st days of January last, both
 ‘ inclusive, the said John Graham subscribed 116 signet letters,
 ‘ the whole, or the greater part of which, were not drawn or writ-
 ‘ ten by himself, or his actual apprentices or clerks by his direction.
 ‘ 3d, The said John Graham has not taken or charged the full fees
 ‘ by law established for signing the signet letters above specified;
 ‘ or at least, he has not taken or charged the full fees by law es-
 ‘ tablished for signing the greater part of the said signet letters.
 ‘ 4th, The said John Graham, instead of taking or charging the
 ‘ full fees by law established for signing signet letters, has, within
 ‘ the last four months, been in the constant practice of subscribing
 ‘ signet letters for various persons, from whom he has received, or
 ‘ has conditioned to receive, a trifling consideration, far short of the
 ‘ full fees by law established for signing signet letters.’ And the
 complainer prayed ‘ the honourable keeper and commissioners
 ‘ to grant warrant for serving this petition and complaint upon
 ‘ the said John Graham, and to ordain him to give in answers
 ‘ thereto within eight days after service; and thereafter, on ad-
 ‘ vising this petition and complaint, with or without answers, to
 ‘ fine and amerciate the said John Graham in the sum of five
 ‘ pounds sterling, and to ordain him to pay the same to the trea-
 ‘ surer of the society for the use of the poor, or to inflict such
 ‘ other punishment upon the said John Graham as shall appear
 ‘ to be proper in the circumstances of the case.’

The petition having been served upon Graham, he lodged an-
 swers, declining the jurisdiction of the keeper and commissioners
 to take cognizance of those charges; but upon advising the pro-
 ceedings, the commissioners found the complaint relevant, and
 appointed Mr Mackenzie to state in a minute his mode of proof,
 and Graham to see and answer. A minute was accordingly lodg-
 ed, in which a reference was made to Graham’s oath, which was
 sustained, and he was appointed to appear and depone under cer-
 tification. He declined to do so, both in respect of their want
 of jurisdiction, and of the illegality of the reference. The com-

missioners, however, after hearing evidence as to the number of signet letters which had been presented by Graham within a limited period, and which were one-seventeenth of those of the whole society, pronounced this judgment: 'The commissioners having considered the petition and complaint, with the whole procedure thereon, and the said John Graham having not only failed to appear, but also intimated his intention not to appear, hold him as confessed on the matters alleged against him, and fine and amerciate him in the sum of L. 5 sterling; and ordain him to pay the same to the treasurer of the society, for the use of the poor, within fourteen days from the date of intimation to him of this deliverance; and further certify him, in case of repetition of similar acts in breach of the regulations of the society, they will proceed to suspend him from, or deprive him of his office of writer to the signet, according as the justice of the case may require.'

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This was followed by an action, the summons of which against Graham proceeded in the names 'of the Right Honourable William Dundas, Lord Clerk Register of Scotland, and principal keeper of the Signet; Colin Mackenzie, deputy-keeper, Alexander Duncan, David Stewart, (and certain other persons, but not including all the members of the society), all clerks or writers to the signet, and commissioners for the society and corporation of clerks to the signet; Richard Hotchkis, treasurer, and Richard Mackenzie, writer to the signet, procurator-fiscal to the said society.' The summons then set forth, 'that the society and corporation of clerks or writers to our signet are entitled to certain exclusive rights and privileges, and particularly to the exclusive right and privilege of signing all letters and writs which pass under our signet:' that the above regulations had been made: that a commission had been granted by the keeper to the deputy-keeper and commissioners; with power to make rules and regulations, to enforce the same, and do every thing competent for him to do: that they had exercised these powers on various occasions: that Graham had been admitted a member, and subscribed the regulations: that he had violated them, and the above proceedings had been adopted against him; and therefore they concluded, that it ought and should be found and declared, by decree of the Lords of our Council and Session, that the acts and regulations of the society and corporation of clerks or writers to our signet, specially founded on in the petition and complaint at the instance of the procurator-fiscal for the said society against the said John

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‘ Graham, and herein before recited; are legal and proper; and
‘ that he, as a member of the said society and corporation, is
‘ bound to give obedience thereto, and to all such other acts and
‘ regulations of the said society as shall be legal and proper, and
‘ found to be necessary for preserving to the said society the
‘ rights and exclusive privileges pertaining to its members: and
‘ it ought and should be found and declared, that the foresaid
‘ petition and complaint, preferred by the procurator-fiscal for
‘ the said society against the said John Graham, and the pro-
‘ cedure thereon, and the judgments and sentence of the com-
‘ missioners pronounced therein, are legal and proper in the cir-
‘ cumstances of the case; and in terms of the sentence of the said
‘ commissioners, the said John Graham, defender, ought and should
‘ be decerned and ordained, by decree foresaid, to make payment
‘ to the said Richard Hotchkis, treasurer of the said society, for
‘ behoof of the poor, of the foresaid sum of L.5 sterling; being
‘ the amount of the fine awarded against the said John Graham
‘ as aforesaid, with the legal interest thereof from the date of the
‘ citation to follow hereon: And further, it ought and should be
‘ found and declared, by decree foresaid, that in case the said
‘ John Graham shall wilfully contemn the authority of the keeper
‘ and commissioners, and continue to act in direct opposition to
‘ the rules and regulations of the society and corporation of
‘ writers to our signet before recited, the said keeper and com-
‘ missioners are entitled, upon such charges being duly estab-
‘ lished against him, to suspend him from or deprive him of his
‘ office of writer to our signet, according as the justice of the case
‘ may require.’ In defence, Graham, after making a statement
of facts, pleaded;—‘ 1st, The pursuers have no title to maintain
‘ the action. They have never been erected into an incorporation
‘ by letters patent from the Crown or by statute. 2d, The pur-
‘ suers have no judicial powers or authority. The attempt
‘ which they have here made to exercise such powers, is a gross
‘ and palpable usurpation of jurisdiction. The proceedings, such
‘ as they were, have been totally informal. They were incompe-
‘ tently brought, and have been most irregularly conducted. As
‘ a specimen of this, the prosecutor is represented as having acted
‘ as a judge. Such proceedings this Court cannot support. 3d,
‘ The pursuers have made various attempts of a nature similar
‘ to the present, but their efforts have uniformly been defeated.
‘ Certain fees are allowed by law to be taken as a maximum for
‘ their professional labour. They attempt to convert the maxi-
‘ mum into a minimum, and to insist that no writer shall in any

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‘ case make a lower charge against his clients than the highest
 ‘ sum which in any instance it is lawful to exact. This is plainly
 ‘ illegal. The pursuers have no right to inquire what are the
 ‘ charges which the defender makes against his employers, as long
 ‘ as it cannot be alleged that he has exceeded the fees authorized
 ‘ by law to be taken by the writers to the signet.’

The case having come before Lord Alloway, his Lordship
 ‘ repelled the objection to the pursuers’ title in the action, and
 ‘ found them, in this respect, entitled to all the privileges of
 ‘ an incorporation;’ but ordained them to give inspection to
 Graham’s counsel and agent of their records. Graham having
 lodged a representation on the question of title, and the merits
 having been argued in memorials, his Lordship reported the
 whole cause on informations.

* *Lord Hermand.*—The argument of the defender just seems
 to rest on his dividing this corporation into separate parts;
 and his argument is, that these separate parts, as such, have no
 independent existence. He says, that they do not elect their own
 officers, they do not enact their own by-laws: that all this is
 not done by the society, but by the keeper, or by the commis-
 sioners, a separate body from the society, and acting under the
 express authority of the keeper, But this corporation is ac-
 knowledged. This action is raised in the name of the keeper, &c.
 Look to the title of the paper. It is the keeper and commissioners
 for the society of clerks or writers to the signet.

This question has already been decided in the case which oc-
 curred before with the solicitors, where it was found that they
 were a corporation, and entitled to the privileges of a corpora-
 tion; and I should be very sorry, indeed, if there was any diffi-
 culty now in the case.

Lord Balgray.—I am very much of the same opinion. The
 argument respecting this society being a corporation, comes a
 great deal too late. It is impossible for us to get the better of
 the judgment in the former case. The authority of Bankton and
 Erskine are in point; and then, when you come to the former
 case, look what the interlocutor says, ‘ Find the keeper, commis-
 ‘ sioners, and clerks to the signet, though entitled to all the
 ‘ privileges of a corporation,’ &c. I say, when I consider the
 judgment of the Court in the former question, it is impossible
 for me to entertain any doubt on the main point now before us;
 more particularly when I see a case of a later date which carries

* These are the opinions which were laid before the House of Lords.

June 21. 1825. the same doctrine with it—I mean the case of the society of writers to the signet against Gardner in the year 1814, where it is assumed, that they were a corporate body, that they had a right to make by-laws, and to protect and enforce these by-laws. So I am afraid it is far too late for us to entertain any doubt of this body being entitled to all the privileges of a corporation. The thing is settled. One of these privileges is the power of making by-laws, which I can have no doubt this body has; and I do not know any regulation which is better for the protection of the lieges, or more for the benefit of the body itself, than this very regulation which has given rise to the present proceedings; and therefore I am quite clear, that we should repel the defences in this case.

Lord Gillies.—I confess there is one point upon which I entertain some little doubt in this case. I am quite clear on the point that has been spoken to. It is a great deal too late now to argue against this being a corporation. The argument against its being a corporation seems to arise only from the peculiarity of the constitution of this corporation,—that the body itself does not possess all the powers which some other corporations have, of electing their own officers, enacting their own by-laws, &c.—that this is done by the head of the corporation, or a certain portion appointed and nominated by the keeper: but these are merely peculiarities, and therefore on that point I have no doubt.

My only doubt is as to the conclusion in the summons, which declares that it shall be in their power to dismiss any of their members. But a member of the society of writers to the signet is a member of the College of Justice, a great corporation, composed of several smaller corporations. Now my difficulty is, whether it be competent for one of these lesser bodies to dismiss one of their number, so as to exclude him from being a member of the larger corporation. It is there the only doubt I have in the case lies.

Lord President.—I might have some difficulty on the last point stated by Lord Gillies, if the society were to proceed to dismiss one of their members without the aid or sanction of the keeper. But if the keeper has prescribed certain laws and regulations, one of which is the power to suspend or dismiss members, and should go along with the society in the exercise of that regulation, I would then have no difficulty. They stand somewhat in a different situation from the Faculty of Advocates, because it is not the Faculty that admit their members; it is the Court alone. The Court can also dismiss any of the members: They could dismiss a writer to the signet: I don't know if they could not dis-

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miss the keeper himself. But at all events, the Court, as the head of this corporation of the College of Justice, might remove all subordinate to themselves. But it does not follow that some of the corporations may not, in matters purely internal, and belonging to their own body, have power by their head, and in conjunction with him, to dismiss any of their members for disobedience of their internal regulations. Suppose he had refused to pay his contribution to the widows' fund: I believe it is one of the regulations, that if the contributions are not paid before a certain time, the member failing may be dismissed: whether that is really the case or not I don't know, and it don't matter; but suppose such a regulation was in existence, that such a law had been made and sanctioned by the keeper, and had been acted on for an hundred years, and subscribed by the member himself, that if he did not pay his arrears within a certain time, he should cease to be a member of the incorporation, would they not be entitled to enforce that regulation? And therefore, in all matters internal to themselves, they have the power of enforcing their regulations. But at all events this man cannot complain; he subscribed these rules, and of course was bound by them: and in this view it really does not matter whether they were a corporation or not. If they are not a corporation, they are at least a club; and any club can dismiss any of its members for not obeying its laws. The new club in St Andrew's Square could do this, and more particularly if its members at their admission subscribe the regulations. Therefore, whether this was a corporation or not, it will not make for the defender; and therefore, I confess, on this part of the case I have as little doubt as on any other.

With regard to holding him as confessed, why he has subscribed to that regulation too; and, even if he had not, I am quite clear that every thing that goes merely to a fine, or even dismissal from office, may be referred to a party's oath. This is the case, your Lordships know, with poachers, whose oath is held sufficient without farther evidence. This man has subscribed and agreed to the rules; these rules are sanctioned by the keeper; and therefore I think he is bound by them. It is said that the keeper may not be a writer to the signet: but what of that? The speaker of the House of Lords may not be a Peer; a commoner may be speaker in the House of Lords; but it will be the House of Lords for all that. On the whole, I see no reason for entertaining any doubt whatever on this case.

The Court accordingly, on the 13th February 1823, 'repelled the defences stated for the defender, and decerned and declared

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' him liable in expenses.' *

Graham then appealed.

Appellant.—1. In considering the question of title, it is necessary to keep in view, that the action is brought by the respondents in their capacity of clerks or writers to the signet. As agents and conveyancers they do not possess any exclusive privileges; and it is not pretended that in either of these capacities they form a corporation. It is admitted, that they have no incorporating charter: but it is said, that they have enjoyed corporate privileges for time immemorial, and therefore the existence of a charter at one time in their favour must be presumed: that, accordingly, they have been in the practice of making by-laws, and have been recognized both by the Courts of law and by institutional writers as a corporation. There is, however, no foundation for such a plea. It may be true, that in relation to burghs royal, and corporations connected with them, a presumption in law arises, from the exercise of corporate privileges for a long period of time, that a charter or seal of cause at one time existed; because it is well known that burghs derived their privileges directly from the Crown, and that the minor corporations obtained a communication of privileges from the burgh. But no such presumption can exist with regard to such a body as the writers to the signet. Besides, they have never possessed any of the distinctive qualities of a corporation. As a body, they have no means of perpetuating their own existence; they are entirely dependent on the keeper. He may restrict their number at pleasure,—a power which was frequently exercised by him. He has even admitted persons, who had not served an apprenticeship, as writers to the signet. Neither is it true, that as a body they have the power of making by-laws. These derive their authority from the keeper alone; and although this is exercised through the intervention of commissioners, yet it is from him that these rules derive their authority. Neither have they any peculiar privileges as a body. It is true that the signet is only affixed to writs subscribed by each of them individually; but that is done in respect of their being the clerks of the keeper, and as such authorized to prepare the writs. Neither have they any peculiar privileges as members of the College of Justice. They are, no doubt, agents

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before the Courts; but so are advocates' clerks and solicitors; and here they do not pretend to any corporate rights as agents. If, therefore, they are not a corporation, they have no right to sue in the mode in which they have appeared in Court; and if, on the other hand, they be a corporation, they do not sue in their corporate capacity. It is true that, in a question with the solicitors, relative to another point, the Court introduced an obiter dictum into their interlocutor, that the writers were a corporation. But this cannot be regarded as a judgment in the present question; and the institutional writers do not say in explicit terms that they constitute a corporation.

2. The regulations attempted to be enforced are most illegal. It may be perfectly lawful to prohibit larger fees to be taken than certain specific sums; but it is most unjust towards the public to enact that nothing less may be taken.

3. The proceedings against the appellant were unlawful. He was called upon to make oath to the verity of certain charges relative to the breach of rules, which it was said he had sworn not to do,—a proceeding incompetent even in a Court of law, and still more so by a self-constituted body. They were also most irregular; because it appears from the record that the sentence was not properly signed, and that the prosecutor acted as one of the judges.

4. The conclusions of the summons, as to the power of suspension and deprivation, are incompetent. The appellant holds a commission for life as a writer to the signet, for which he paid the usual fees, and therefore gave an onerous consideration. Besides, the conclusion does not bear relation to what has been done, but as to what 'shall' be done; thus leaving it to the discretion of the respondents to fix the grounds on which the appellant may be deprived of his commission.

Respondents.—1. The respondents have a clear title to pursue the present action. The society of writers or clerks to the signet are a corporation. They are specially mentioned as such by the first legal authorities, and as constituting an inferior corporation included in the greater one of the College of Justice; and they have enjoyed all the rights and privileges of one for centuries past.—They have also been recognized as such by the decision of the Court of Session in the question with the solicitors, where their corporate powers and privileges were expressly sustained, and their nature and extent precisely defined. Admitting that the appellant was well founded in his views of the society,—that they are merely a number of individuals appointed by the keeper of the signet to execute a part of his duty, and deriving their

June 21. 1825. whole privileges from, and holding them in dependence on him; still, it is evident, that the keeper must have a right to insist that each member shall execute the duty committed to him according to the regulations which he has laid down and sanctioned, and which regulations constitute the condition of the appointment. He has, on such a supposition, an undoubted right, by himself or his delegates, the deputy-keeper and commissioners, to inquire into and to punish, to the extent of deprivation, all breaches of these regulations, and to have his powers in this respect declared by the Court. But he and the deputy-keeper and commissioners are pursuers of the action. There is, therefore, in every point of view, a sufficient and competent title in the pursuers to insist.

2. The particular regulations on which the complaint against the appellant was founded, have been from time immemorial the law of the society, and have been repeatedly approved of and sanctioned by the keeper, the commissioners, and the society at large. They were consented to and subscribed by the appellant himself at the time of his admission, and constituted the condition of his appointment. They are, in themselves, in no respect contrary to or inconsistent with justice or general law; and they are highly useful, nay, requisite and indispensable, to secure the exclusive privileges of the society from being clandestinely and illegally communicated to other practitioners, not members.

3. The proceedings before the commissioners, on the complaint against the appellant, were strictly regular and formal, being conducted in terms of the regulations, which constitute the law of the corporation, and the condition of his admission as a member. The reference made to his oath, for the purpose of proving the charge, is quite consistent with the general law of Scotland, which, in all civil questions, admits of this species of evidence. It is attended with no hardship or injustice in itself; and in the particular circumstances of the society it is the more necessary, that the offences to which it is applicable can scarcely, in any case, be substantiated by other evidence. The other objections stated by the appellant are too frivolous to deserve notice.

4. There is nothing incompetent or improper in the conclusion of the summons, as to the power of suspension and deprivation. It is one merely declaratory of the power, which leaves open to question, both the legality of any regulation which may be assigned as the ground of any future exercise of the power, and the justice of the application of that rule to the particular case itself. The power is clearly inherent in every corporation; and were it possible to

hold that the society is not entitled to the privileges of one, it must certainly be competent to the keeper of the signet, and to the commissioners, to whom he has expressly delegated it. June 21. 1825.

The House of Lords ‘ordered and adjudged, that the interlocutors complained of be reversed, and that the defender be assolzied.’

LORD GIFFORD.—My Lords, There is another case to which I will call your Lordships’ attention,—the case of Graham against the writers to the signet. My Lords, this was an action brought by the Right Honourable William Dundas, Lord Clerk Register of Scotland, and principal keeper of the signet; Colin Mackenzie, deputy-keeper of the signet; Alexander Duncan, David Stewart, and certain other persons, all clerks or writers to the signet, and commissioners for the society and corporation of clerks to the signet; Richard Hotchkis, treasurer; and Richard Mackenzie, writer to the signet, procurator-fiscal for the said society.

The summons states, ‘that the society and corporation of clerks or writers to our signet are entitled to certain exclusive rights and privileges, and particularly to the exclusive right and privilege of signing all letters, or writs, which pass under our signet: That with a view of preserving those exclusive privileges, which, from their nature, might easily be infringed to a great extent by any one member of the society, it was found necessary by the society, at a very early period, to establish various rules and regulations to be observed by the members.’ Then the summons states a minute of the society, passed so long ago as the 22d of January 1766:—it then sets out what are the present acts and regulations, some of them in force, regulating the conduct of clerks or writers to the signet; and one is, ‘that no clerk to the signet shall own or acknowledge any person as his apprentice or clerk, but such only as in very deed and truth, without fraud and collusion, is his real actual apprentice or his clerk, and actually attending and writing in his chamber;’—and then, ‘that no clerk to the signet shall subscribe any bills, summonses, letters, signatures, precepts, services before the macers, or other writs peculiar to the clerks to the signet, but such as are drawn or written by themselves, or their actual apprentices or clerks by their directions, except when they sign for an absent brother, as before directed, and except bills of advocacy and suspension, and all ordinary summonses, which do not pass upon bills; and that every clerk to the signet shall take the full fees by law established, and no less;’—and then, ‘that in case any clerk to the signet shall transgress or contravene any of the preceding regulations in this chapter, he shall, for the first offence, pay L.5 sterling to the treasurer of the society, for the use of the poor, and for every subsequent offence shall be suspended from his office.’

The summons then states, that the principal keeper of the signet has granted a commission, according to the ancient custom, to a certain

June 21. 1825. number of the clerks to the signet, who are to regulate the proceedings of the society, and to punish all abuses, according to the acts made by former keepers or commissioners to the signet, with power also to make such new acts or statutes for the good of the calling as they should think necessary, and under the pains of deprivation, suspension, or pecuniary fines, according to the nature of the offence; and to make such acts and statutes as they shall find necessary in relation to the trial of clerks to the signet. The summons then goes on to state, that each member of the society, previous to his admission, subscribes the acts and regulations of the society, and takes an oath for his faithful conduct as clerk or writer to the signet. Then it states, that the appellant was admitted a member of the society on the 20th of May 1800, and subscribed the acts and regulations of the society, and also took the oath of fidelity. Then it states, that the appellant, since his admission into the society, had been guilty of infringing the acts and regulations to a great extent; and that the procurator-fiscal for the society had presented a petition and complaint against him to the keeper and commissioners: and then it goes on to allege, that, in consequence of this complaint, certain proceedings took place before those commissioners: and I should have stated to your Lordships, that one of the rules and regulations upon which they rely is, that, upon any complaint to be made upon the contravention of the articles, or any of them, they might be referred to the delinquent's oath of verity, when he wants other probation; and that they being lawfully cited by the ordinary officer personally to appear before the commissioners to answer the complaint, and failing to appear, or refusing to depone or purge themselves by their oaths, they shall be holden as confessed, which shall be as sufficient as if the complaint were proved by writing or witnesses.

It appears, my Lords, as I have stated, that this complaint came on before the Commissioners; that Mr Graham was required to take the oath to purge himself; that he declined to do so; that in consequence the commissioners, having considered the petition and complaint, with the whole procedure thereon, and the appellant having not only failed to appear, but also intimated his intention not to appear, held him as confessed on the matters alleged against him, and fined him in L. 5 sterling, and ordained him to pay the same to the treasurer of the society, to the use of the poor. Then, my Lords, they state, that he refused to pay the L. 5, and also contemned the authority of the keepers and commissioners; and maintained, that he was entitled to act in direct opposition to the rules and regulations of the society, and in defiance of the powers vested in the respondents to punish in such cases, by fine or otherwise, as the justice of each case might require; and these are the conclusions, ' that it ought and should be found and declared, by decree of the Lords of our Council and Session, that the acts and regulations of the society and corporation of clerks or writers to our signet, specially founded on in the petition and complaint at the instance of the procurator-fiscal for the society against the said John Graham, and herein before recited, are legal and proper, and that he,

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‘ as a member of the society and corporation, is bound to give obedi-
 ‘ ence thereto, and to all such other acts and regulations of the society
 ‘ as shall be legal and proper, and found to be necessary for preserv-
 ‘ ing to the society the rights and exclusive privileges pertaining to its
 ‘ members ; and that the foresaid petition and complaint, and the pro-
 ‘ cedure thereon, and the judgments and sentence of the commission-
 ‘ ers pronounced therein, are legal and proper in the circumstances of
 ‘ the case ; and that he should be decerned and ordained to make pay-
 ‘ ment to the treasurer of the society of the said L. 5 awarded against
 ‘ him, with legal interest from the date of the citation. And further,
 ‘ in case he should wilfully contemn the authority of the keepers and
 ‘ commissioners, and continue to act in direct opposition to the rules
 ‘ and regulations of the society, that the keepers and commissioners are
 ‘ entitled; upon such charges being duly established against him, to
 ‘ suspend him from, or deprive him of his office of writer to the signet,
 ‘ according as the justice of the case might require ; and lastly, that
 ‘ he should be decerned and ordained to make payment to the respon-
 ‘ dents of their costs.’

My Lords,—In consequence of this summons, defences were lodged by Mr Graham, in which he contended, that the pursuers had no title to maintain the action ; that they had never been erected into an incorporation by letters patent from the Crown, or by statute ; that they had no judicial powers or authority ; that the attempt which they had made to exercise such powers was a gross and palpable usurpation of jurisdiction ; that the proceedings, such as they were, had been totally informal, being incompetently brought, and most irregularly conducted ; that they had made various attempts of a nature similar to the present, but that their efforts had been uniformly defeated ; and that, with respect to the fees, certain fees are allowed by law to be taken as a maximum for their professional labour ; but that the pursuers had no right to convert the maximum into a minimum, and to insist that no writer should make a lower charge than the highest sum which it was lawful for him to exact ; and that there was no offence in his taking less fees than were allowed by law.

My Lords,—When this case came on, an interlocutor was pronounced by the Lord Ordinary, on the 7th of December 1821, in the following terms :—‘ Having heard parties’ procurators upon the grounds
 ‘ of the libel and defences, appoints the parties to state the case in
 ‘ mutual memorials.’ Afterwards another interlocutor was pronounced, on the 12th of December 1821, in these terms :—‘ Having heard the
 ‘ counsel for the parties, appoints the pursuers to exhibit their books
 ‘ and records.’ Against these interlocutors the pursuers represented. They were anxious to have a finding engrossed in the interlocutor, that their title to pursue was sufficient ; and to this effect they begged the Lord Ordinary to find and declare accordingly. Upon advising that representation, with answers, the following judgment was pronounced on the 22d of December 1821 :—‘ The Lord Ordinary, hav-
 ‘ ing considered the representation; and the answers thereto, together

June 21. 1825. ‘ with the whole process, repels the objection stated to the pursuers’
 ‘ title in this action, and finds them, in this respect, entitled to all the
 ‘ privileges of an incorporation : finds, that the defender’s counsel and
 ‘ agent are entitled to inspection in the books or records of the pur-
 ‘ suers, not only of all the minutes founded on by the pursuers, of
 ‘ which extracts are produced, and of all proceedings relative thereto,
 ‘ but also to inspection of these records as to all the particular acts and
 ‘ regulations of the society.’ Your Lordships perceive, as far as the
 merits of the case were concerned, the Lord Ordinary repelled the
 objection stated to the pursuers’ title, and found them, in this respect,
 entitled to all the privileges of a corporation.

My Lords,—The case was afterwards brought again before the Lord
 Ordinary, in June 1822, and then he pronounced this interlocutor :—
 ‘ Having considered the memorials for the parties, and the whole pro-
 ‘ cess, makes avizandum with the cause to the Court ; and appoints the
 ‘ parties to prepare, print, and box informations quam primum, that the
 ‘ same may be reported.’

The case came before the First Division of the Court of Session
 on the 13th of February 1823, when this judgment was pronounced :—
 ‘ The Lords having advised the mutual informations for the parties in
 ‘ this cause, they repel the defences stated for the defender, and de-
 ‘ cern and declare, in terms of the conclusions of the libel, against him.’
 So that your Lordships perceive, by this interlocutor, that the Court
 of Session did pronounce a judgment on all the conclusions of the libel
 against the defender.

My Lords,—One question in this cause, which has been agitated at
 your Lordships’ Bar, was, Whether these clerks or writers to the signet
 were, or were not, a corporation?—for your Lordships perceive the
 foundation on which the allegation of this summons sets out is, that this
 ‘ society and corporation of clerks or writers to the signet are entitled
 ‘ to certain exclusive rights and privileges, and particularly to the ex-
 ‘ clusive right and privilege of signing all letters or writs which pass
 ‘ under our signet.’ Now, my Lords, that was one question in the
 Court below ; but then another question was raised,—Whether, assum-
 ing that they were a corporation, this action was properly brought, not
 in the name of the corporation, but in the name of Mr Dundas, who
 was the Lord Clerk Register of Scotland, and keeper of the signet,
 and some of the writers and clerks to the signet who had been ap-
 pointed commissioners for the society and corporation of clerks or
 writers to the signet, and the other pursuers, namely, Mr Hotchkis the
 treasurer, and Mr Mackenzie the procurator-fiscal? So that your
 Lordships perceive this action is brought, not in the name of the whole
 body of writers to the signet, but is brought by Mr Dundas the keeper
 of the signet, Mr Colin Mackenzie the deputy-keeper, by some of the
 writers and clerks to the signet, by Mr Hotchkis the treasurer, and by
 the procurator-fiscal, Mr Richard Mackenzie : and this is important
 in this view of the case, because your Lordships will see one of the
 conclusions of this libel is, ‘ that the acts and regulations of the society

‘ and corporation of clerks or writers to our signet, specially founded June 21. 1825.
 ‘ on in the petition and complaint at the instance of the procurator-
 ‘ fiscal for the said society against the said John Graham, and herein
 ‘ before recited, are legal and proper.’

Your Lordships perceive, that the object of this action was twofold: first, to have it declared that all their acts and regulations under which they proceeded against Mr Graham were good, not only against him, but against all the other members of the body; and afterwards what may be called the penal conclusion, to have the penalty of L. 5 paid to Mr Hotchkis, for behoof of the poor, according to the sentence which had been pronounced on the petition of complaint against Mr Graham. My Lords, if this body of writers to the signet are a corporation, I apprehend this action ought to have been brought by them as a corporation, to have their acts declared valid against any individual member. It was also necessary that it should be brought by them as a corporation, if they sought to enforce the payment of the L. 5. Now, my Lords, it is not brought by them as a corporation, but only brought by a certain portion of their body,—by the keeper, (supposing him a member of the corporation), and by the commissioners for the society and corporation of clerks; and not brought by them, as we have seen it sometimes done in an action in the Courts of Scotland, on behalf of themselves, and all other members of the body, but it is brought by them individually, as keeper of the signet, and as commissioners and procurator-fiscal and treasurer.

My Lords,—It has been said, that not only is this body a corporation, but that that question has been set at rest by the decisions: that it was a body as long as history could go back, acting and making regulations for themselves, called by-laws, as a corporate body: that they have been recognized as a corporate body: that they have sued and been sued as a corporate body; and that, therefore, it was now too late to question their being a corporation. And, my Lords, great reliance has been placed upon the passages which occur in one or two of the institutional writers, and particularly on one or two decisions which have taken place, in which this very respectable body of writers to the signet were parties. Now, my Lords, with respect to the institutional writers, Lord Bankton and Mr Erskine were cited; but I cannot find in either of their works the proposition stated on the part of the respondents, that they are a corporation. My Lords, it is very true, that in a marginal note to the passage I will read to your Lordships it is said, that the writers or clerks to the signet are a branch of the College of Justice, and a corporation. As I had read it in the papers, I certainly did read it supposing Lord Bankton had expressly so laid it down in the text; but when one comes to look to the text, to which this is the marginal note, he states no such thing. After stating how clerks to the signet are admitted,—and your Lordships know they are admitted by presentation from the secretary or lord-keeper of the signet, upon a trial of their sufficiency before certain of the com-

June 21. 1825. missioners appointed for that purpose,—then he states how they are sworn, and then he goes on in this way :—‘ Writers or clerks to the signet are a considerable branch of the College of Justice, and compose an honourable body under one of the Secretaries of State, or the Lord-Keeper of the Royal Signet for Scotland, when there is such a distinct office, which is the case at present; and they are properly clerks in the secretary’s office. The deputy-keeper of the signet, in the right of the secretary, or of the principal keeper, presides in all their meetings, and, together with the commissioners of the signet appointed by the secretary or principal keeper, is intrusted with the administration of the affairs of the society, the trial and punishment of delinquent members, the management of the common stock, and the examination and admission of intrants. The clerks to the signet long since have not had any concern in officiating as clerks of Session, who have been long under the foresaid regulation; but they still write the above bills, which are presented to the Ordinary by the clerk to the bills. Besides their peculiar province in relation to signatures and expediting letters under the King’s signet, exclusive of all others, they practise in writing securities and conveyances, which is a considerable part of their business; but others, likewise skilful in those matters, do it; for there are a great many other writers who profess that employment, though they are not writers to the signet; and those also conduct processes or actions before the Court of Session, and without them law affairs could not be carried on to any purpose. The clerks to the signet were of ancient standing; for they are mentioned as an established society at the institution of the College of Justice, and reference is made to their fees as settled in James the Fourth’s reign.’ Now, my Lords, with respect to their being referred to as a corporation, Lord Bankton refers to the statute of 1537, cap. 59. My Lords, that statute does not appear to me to bear out that they are mentioned as a corporation: ‘ *Item*, That all clerks to the signet be sworn to exercise their offices lawfully and diligently; that none of them reveal nor make manifest to any man what they write or does for another, but shall keep all close and secret,’ and so on. This is confirmed by two or three other statutes, cap. 60. and one or two others, in neither of which can it be contended that they are mentioned as a corporation; on the contrary, they are mentioned as persons whose individual conduct is to be regulated by statute.

I would refer your Lordships to the manner in which Mr Erskine, in his Institutes, treated this particular body. He says, in treating of corporations, (and this is the passage which has been cited), ‘ A corporation, styled by the Romans, Collegium or Universitas, is composed of a number of men, united or erected by proper authority into a body politic, to endure in continual succession, with certain rights and capacities of purchasing, suing,’ &c. Then he goes on—‘ Cities, boroughs, hospitals, &c. may be thus incorporated; and we have frequent instances of lesser corporations within greater: thus, in

‘ most of the cities and boroughs of the kingdom, we see wrights, June 21. 1825.
 ‘ weavers, merchants, &c. incorporated, with certain rights and fran-
 ‘ chises granted to each of them; and of the same sort may be reckoned
 ‘ the College of Justice, which includes several lesser corporations
 ‘ under it.’ And they argue, that though the writers to the signet
 are not mentioned as lesser corporations, they must be considered as
 included under that term.

But then they say, they are still more fortified by recent decisions; and particularly a case before your Lordships’ House, of the Society of Clerks to the Signet, and the Solicitors of the Supreme Courts of Scotland, in which the judgment was affirmed by your Lordships in the year 1803. Now, I beg to call your Lordships’ attention to that case. Your Lordships will find they are sued in a corporate name, and sued there as ‘ the keeper, commissioners, and whole society of clerks to ‘ the signet;’ that was the way in which they sued there. The question in that case was, Whether those writers to the signet, or clerks, as they there called themselves, to the signet, were entitled to increase their legal fees; and the finding of the Court of Session is certainly singular. The interlocutor begins with this finding: ‘ Find the respon- ‘ dents, keeper, commissioners, and clerks to the signet, though en- ‘ titled to all the privileges of a corporation, have no power, by their ‘ own authority, to increase their legal or established fees; and there- ‘ fore prohibit and discharge,’ and so on. Then that interlocutor was afterwards amended by another: ‘ Having advised the mutual petitions ‘ for the keepers, commissioners, and clerks to the signet, and the ‘ society of solicitors of the Courts of Session and Commission of ‘ Teinds, and High Court of Justiciary in Scotland, with the answers ‘ to these petitions, find’ so and so. The decision there was adverse to the writers to the signet; they brought these interlocutors by appeal before the House of Lords, and those interlocutors pronounced against them below were affirmed: but I do not see that the question there was ever raised whether they were a corporation; all that the interlocutor there found was—to be sure it is a singular finding—not that they were a corporation, but that they were entitled to all the privileges of a corporation; and that is referred to by the Lord Ordinary in the interlocutor to which I have called your Lordships’ attention. He found them entitled to all the privileges of a corporation, but without saying they were a corporation. Why, my Lords, they have sued since in their own capacity, but by a very different title from that which they do in the case to which I have referred your Lordships.

The next case occurred in the year 1814, when they failed again; and there was no question there as to their being a corporation; and there they sued in this title, ‘ The keeper, deputy-keeper, and society of ‘ writers to his Majesty’s signet.’ Now, if they are a corporation, it is a little singular they should have varied so in the manner in which they sued; for it appears to me, from the research I have been able to make, and what has been stated at your Lordships’ Bar, that the law in

June 21. 1825. this country is pretty much the same as in Scotland. They admit, that a corporation cannot exist except by prescription, by long-continued usage, or by charter or Act of Parliament. In this case they admit there is no charter of incorporation; but they say, that the long-continued usage they have enjoyed in making these by-laws, and other acts which they have done, they could not have done but by a corporate character; that that is sufficient evidence to establish before your Lordships that they are an incorporation. They say it is no objection to that, that the keeper of his Majesty's signet is a person appointed by the Crown, and that he also appoints a select body, (as it was argued by Mr Warren, the commissioners were a select body of this incorporation of writers to the signet), and that it was not uncommon for the select body to have a meeting, and prepare the by-laws by which the whole were to be bound. But my difficulty has been, looking at these proceedings, to understand how, whichever view I take of them, this ever can be supported. If they are a corporation, they ought to have sued in this case in their corporate character,—more particularly as they sought to have it declared, that the by-laws enacted by a particular portion of their body were to be binding on all their body,—more particularly, with respect to that declaratory conclusion, they ought to have sued in their corporate capacity, because it was in their character of clerks to the signet that they wished to have it declared that the by-laws were binding.

In the next place, as to this penalty of L.5, the commissioners were not particularly entitled to it; the keeper of the signet was not entitled to it; Mr Hotchkis was not particularly entitled to it, for it was to be paid to him for the benefit of the poor; the procurator-fiscal was not entitled to it. It was argued, and probably rightly, that he was added that your Lordships might pronounce some judgment, but that still the other members might have the benefit of the interlocutor which has been pronounced.

But, my Lords, it does appear to me, they are either a corporation, or they are not. If they are a corporation, they have not sued in their corporate character, and therefore those individuals, who are only a portion of the members of that body, have no right to come into Court to have it declared, that the acts and regulations made for the benefit of the whole body are to be binding upon the whole body, but the corporation itself ought to do so. With respect to the fine of L.5, the corporation ought to sue for it. The corporation is not itself entitled to the fine, because it was to be paid to the poor, but it is the corporation who must recover it at the hands of the party guilty of the charge imputed to him. Therefore I must confess, though I feel great hesitation when opposed to the very able persons who have expressed a different opinion—but when I appear at your Lordships' table, I am bound to give to your Lordships the best advice I can—I feel, I say, a great hesitation in asking your Lordships to undo that which has been done by the Court below; but it does not appear to me that the

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question discussed at your Lordships' Bar was properly brought forward,—whether, supposing this to be a corporation, the suit has been rightly instituted? The Court seems to say, whatever might be their opinion, yet they think the decisions to which I have called your Lordships, particularly the decision of 1799, in which it was determined they were entitled to the privileges of a corporation, bind the Court. But, my Lords, if that has established that they are a corporation, it is as keeper, commissioner, and whole society of clerks to the signet. It has never been determined that, if they are a corporation, they can sue as keeper, commissioners, treasurer, and procurator-fiscal; for they do not sue in their corporate character, as constituting the whole corporation, but merely as individual members of the body.

My Lords,—I have thought it right to intimate to your Lordships what opinion I have formed. If I were called upon to determine the question, whether they are a corporation or not, without materials upon which it could be more clearly shewn whether they were a corporation, it would be improper to propose a decision upon that; but it appears to me, that, even if they are a corporation, they are wrong in their mode of proceeding.

There is another question, Whether, supposing them a corporation, supposing they have the power of making by-laws, they can sustain the by-law they have made in this case, in which they enacted, that the party accused of an offence should be bound to purge himself upon his oath of verity, and that, if he refused so to do, he was to be holden confessed, calling upon the party charged with a probable neglect of duty to purge himself, or to confess his offence? It might be a very serious question upon that by-law, whether or not it was a legal by-law; because they have no right to make any by-law binding upon their members, not consistent with the general law of the country. Another question was, Whether the by-law was not illegal in enacting, that the party should not take less than certain prescribed fees by Act of Parliament of 50th Geo. III. which passed in the Parliament of this country? It was enacted by the by-law, that certain fees should be taken by the writers to the signet, and no less; but, my Lords, considering this an action brought by these individuals, not as representing the whole corporation, because they do not affect to do so in their summons,—not suing for the whole corporation, which, as I have said, is sometimes the case in the Courts of Scotland, that the party has sometimes sued for himself and all the others,—it appears to me impossible that these interlocutors can be supported upon this summons. If they are a corporation, they should have sued qua corporation: they have not done so, and therefore, whether a corporation or not, it appears to me these interlocutors cannot be supported.

I should notice another argument which was raised, that, if they are not a corporation, Mr Graham, who signed these, had personally bound himself to these articles; and therefore they might, though not a corporation, enforce against him the performance of the contract which

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he had himself entered into when admitted a writer to the signet. But then they ought to have sued as a body. The commissioners had no right to sue; the keeper of the signet had no right to sue; the treasurer had no right to sue, nor the procurator-fiscal. It appears to me, that they are not in a situation to support these interlocutors in this suit. Upon the whole, therefore, for the reasons I have ventured to state to your Lordships, I must propose to your Lordships a reversal of these interlocutors, because it appears to me, that whether the writers to the signet are a corporation, or not a corporation, these interlocutors cannot be sustained.

Appellant's Authorities.—(1.) 1. Blackstone, 467.; Masons of Lanark, June 11. 1730, (14,554.); Crawford, June 13. 1761, (14,555.); P. F. of Aberdeen, Feb. 15. 1762, (19,061.); 1. Ersk. 2. 49.; 1. Ersk. 7. 64.; 1. Hist. of Charles V. 38.; Miller, 381.; 3. Hallam, 33.; 1. Hallam, 303.; 2. Turner's Hist. 102.; Madox, 26.; 1. Kidd, 44.; Skirving, Jan. 19. 1803, (19,021.); Maitland, 291.; Skene, voce Guild; Dr Jamieson, voce Guild; 1. Craig, 1663.; 1. Bank. 249.; 1. Ersk. 7. 64.; 1. Blackstone, 474.—(3.) Hogg, Dec. 1681, (13,106.); Duff, Feb. 1799, (9576.); 1. Ersk. 7. 64.; 2. Kidd, 112.; Tomlin, voce By-laws.

Respondents' Authorities.—(1.) 1. Bank. p. 49.; 2. Bank. 495.; 1. Ersk. 7. 64.; Feuars of Kelso, Jan. 8. 1755, (1380.); Tailors of Perth, Dec. 10. 1756, (1974.); P. F. of Paisley, Feb. 17. 1761, (1956.); Lawson, Aug. 5. 1768, (1965.); Tailors of Potterow, Jan. 26. 1776, (7709.); Solicitors against Writers to the Signet, Feb. 25. 1800, (No. 1. App. Coll. of Jus.); Writers to the Signet, June 21. 1814, (F. C.)

SPOTTISWOODE and ROBERTSON—J. CHALMER,—Solicitors.

No. 46.

YOUNG, ROSS, RICHARDSON and Co. Appellants.

JOHN RAMSAY, Respondent.

Acquiescence.—A landlord having let a mill described as a paper mill; and it having been made use of, with his knowledge, for six years as an oil mill; and thereafter the tenant having assigned the lease to another party, who employed it as a flour mill;—Held, (affirming the judgment of the Court of Session), That the landlord was barred from insisting that it should not be used as a flour mill, but should be reconverted into a paper mill.

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1ST DIVISION.
Lord Meadowbank.

MORRISON and Lindsay, papermakers, in 1792 acquired, by missive from the Duke of Athole, a lease for 58 years of the paper mill of Ruthven, and entered into possession. Afterwards, Young, Ross, Richardson and Company, having purchased the barony, land, and mill of Ruthven, executed in 1813 a regular lease in reference to the missive in favour of the son of Lindsay, (Morrison and Lindsay having died), of 'all and whole the paper mill of 'Ruthven, with the waterfall and other appendages belonging 'thereto,' declaring that he and his successors were to be thirled