

P R I V I L E G E .

1711, January 16.

The TOWN of Perth *contra* The INCORPORATION of SHOEMAKERS.

LORD MINTO reported The Town of Perth *contra* The Incorporation of the Shoemakers there, who have been in use to debar all country sutors from bringing in, either on their yearly fairs or weekly market-days, any shoes from the country, for the use of burgesses and gentlemen, but only single-soled shoes, or pumps without heels, for the use of common people, or Highlanders, and any unfreemen contravening this statute, they imprisoned them, and confiscated their work. The inhabitants thinking themselves prejudged by this restraint, raised a process against the deacon and incorporation of the sutor-craft in Perth, founding on the natural liberty and privilege of free subjects, and the design of markets and fairs, which is to accommodate the lieges at easy rates, whereas, by this monopoly and oppression, the price of boots, shoes and slippers, is exceedingly increased. *Alleged* for the Shoemakers, That they, by their erection into a deaconry, and their seal of causes, are entitled to debar all unfreemen, who, without paying scot or lot, eat the bread out of their mouths, who bear all the burdens imposed by the burgh; and they have, past memory, been in possession of this privilege without controul till now, and so have prescribed a right to debar, seize, fine, imprison, and amerciate all unfreemen encroaching on their privileges, exclusive of all others. *Answered*, Many things were introduced with a good design, which in process and continuance of time prove highly inconvenient, and destructive to the original view and design, which is very evident in these seals of causes, given anciently to trades, to invite foreigners and able craftsmen to settle among us, which are now detorted to seclude those very persons, who were, in the Sovereign's eye, to bring useful manufactures amongst us. Yea our very laws have taken notice of such extortions; for act 42, 1491, discharges cordiners to take custom from others of their trade. And, as to their

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The nature of an exclusive privilege in favour of an incorporation in a burgh.

No 1. immemorial possession, that can never make prescription, it rather being a *corruptela et pravus mos* than a *rationabilis consuetudo*; and there is no obtruding of prescription, *contra rem publicam*, or the universal utility of the society. Public laws cannot be abolished. *Usucapio locum non habet in rebus publicis populi Romani vel civitatum, l. 9. § 45. D. De usurpat. et ubi lex inhibet usucapionem, ibi bona fides possidenti nihil prodest.* And now since the Union, trade being diffused through the whole united kingdom, that which an Englishman may import to Perth on the market-days cannot well be refused to a Scotsman; and the shoemakers of Edinburgh never quarrel the country sutors to bring in and sell all their shoes on the market-days, every week, which they do publicly, and in the view of all, without the least contradiction.

THE LORDS declared in favours of the inhabitants, and found the Shoemakers could not stop any to bring in shoes on the market-days, to be sold and vended there.

Fountainball, v. 2. p. 626.

* * * Forbes's report of this case is No. 160, p. 10908, *voce* PRESCRIPTION.

See APPENDIX.