

No 64.

*Pleaded* in a reclaiming bill, That, by these acts, any persons were allowed to be employed in the building and repairing of houses. *2dly*, That complete pieces of work might be brought in by strangers, and delivered; and the frames being by him sold to his employer, it were absurd to allege he could not set them up, though it might be necessary to take down a pannel for that purpose.

*Answered*, That the acts were in desuetude, and frames of windows were not such pieces of work as might be bought from unfreemen, such as cabinets for example, but were parts of the house.

THE LORDS adhered.

Act. Lockhart.

Alt. H. Home.

Clerk, Forbes.

Fol. Dic. v. 3. p. 106. D. Falconer, v. 1. No 154. p. 197.

1749. February 10. The MALTMEN OF GLASGOW *against* ROBERT TENANT.

No 65.

The maltmen being in Glasgow a corporation, it was found, that an inn-keeper might make malt for his own use; but if he distilled or brewed it, and sold the ale or spirits, he must enter with the incorporation.

THE visiter and collector of the maltmen calling of Glasgow, pursued Robert Tenant, inn-keeper there, before the Magistrates, and obtained him to be fined in L. 20 Scots, for making malt without being entered with the calling: Which he suspended; for, that by act 29. Parliament 1567. ratified by act 15. Parliament 1669, it is statute, that maltmen should be no craft nor have a deacon.

THE LORD ORDINARY, 17th November 1748, 'sustained the reason of suspension founded on the act of Parliament, notwithstanding of a ratification 'passed in the Parliament 1672, founded on by the chargers.'

*Pleaded* in a reclaiming bill: There was a decret arbitral pronounced 1605, betwixt the Merchants and Trades of Glasgow, by which the constitution of the town was settled as it subsists to this day; part whereof is, that there are six maltmen, members of the convener's house, that they are capable of being chosen deacon convener, who is a counsellor *ex officio*, and of being trades bailies: By this agreement the maltmen and mealmen are allowed to have a visiter, and the burgesses who use these employments are obliged to pay them certain small upsets. It was approved by the magistrates, recorded in the council-books of the town, and ratified in Parliament 1612. On occasion of the statute 1669, the calling applied to Parliament, and obtained a ratification of their privileges 1672; which they have possessed ever since, and got confirmed by the bishop 1684. In 1677, the magistrates settled the upset at L. 100 Scots.

*Answered*: The ratifications ought not to derogate from public law; and so was found in the House of Peers, in the competition for the honour of Earl of Stair, which was resigned, and granted again by patent to the then Earl, and any person he should name, by a writ under his hand; and failing that, to the second son of Colonel William Dalrymple; ratified in Parliament: In which case the House of Peers preferred the substitute to the Earl's nominee. *See* PERSONAL and TRANSMISSIBLE.

THE LORDS, 26th January 1749, repelled the reasons of suspension founded on the acts of Parliament 1567 and 1669, in respect of the ratifications 1612 and 1672, founded on by the chargers, and the possession following thereon; and found that the maltmen calling of Glasgow were a subsisting legal corporation: And refused a bill and adhered.

Act. *Lockhart & Brown.*

Alt. *W. Grant.*

Clerk, *Murray.*

No 65.

22d February 1750.

THE visiter and collector of the maltmen calling in Glasgow, pursued Robert Tenant, inn-keeper there, before the Magistrates, and got him fined for making malt for sale, not being one of the calling.

He suspended; for that he made no malt for sale, but consumed the whole in his own house, in ale and spirits, which he brewed and distilled for the service of his guests.

*Answered:* The suspender is still a seller of malt, as he sells his ale and spirits, and does not consume them in a private family.

*Observed,* That the maltmen are subject to the inspection of the visiter: And it cannot be said he could visit, and put a price on the suspender's malt.

THE LORDS, 20th November 1749, 'found, That Robert Tenant, in respect he did not make malt for sale, was not obliged to enter with the incorporation.'

On bill and answers, whereby it appeared he had sold some spirits;

THE LORDS adhered with regard to the malt made into ale and spirits consumed in the house; but found that the suspender behoved to pay duty as a maltster, for the malt made by him, and distilled into spirits, and sold in gross abroad: And that if he continued to make malt, and use it in that manner, he behoved to enter into the society of maltmen.

Reporter, *Drummore.* A.R. *W. Grant.* Alt. *Lockhart & Ferguson.* Clerk, *Murray.*

*Fol. Dic. v. 3. p. 107. D. Falconer, v. 2. No 55. & 132. p. 53. & 150.*

1750. November 15.

DONALD against DICK.

No 66.

ONE heritor within burgh having built to the extremity of his property, as appeared in a question concerning the adjacent ground, alleged by him to be a common entry,

THE LORDS found the conterminous heritor might also build to the extremity of his.

*D. Falconer, v. 2. No 162. p. 185.*