

no attempt made in this case to hold the father personally liable for the debts of the partnership; the question was solely as to the son's liability; and against him the creditors were held entitled to claim and recover their debts, making a distinction only between debts due by the Company to its lawful creditors, and those due to a partner. The principle of decision in the Court of Session, appears to have been, 1st, That the son was, at fourteen, a minor, not *proximus minoritati* merely, and as such, might engage in trade, and be liable for the obligations come under in the course of that trade. 2d, That the debts contracted by the Green Coal Company were beneficially expended on his estate, and, therefore, *in rem minoris versum*. No doubt one of the interlocutors in the earlier branch of the proceedings held the minor liable to pay the creditors only of *consent*; but this consent was not *sua sponte*, but of necessity, and in consequence of having in a previous process for the recall of the sequestration at his instance, succeeded in obtaining a recall of that sequestration, on condition of his paying the Company creditors. In the second reduction, by which he sought to reduce that *consent* as well as the other proceedings, on the ground of minority, the abstract question of his liability was again brought before the Court, but he did not prevail. The principle Professor Bell lays down, of holding the father or tutor liable in such a case, however equitable in itself, is made to rest on the *obiter dicta* of some two of the judges in the cases referred to; but there was no positive decision on the point.

1816.

WILSON
v.
LAIDLAW.

The INCORPORATION of WRIGHTS, MASONS,
and COOPERS of Portsburgh, . . . *Appellants*;
GEORGE LORIMER, Mason at Laurieston, and
THOMAS MILLER, Mason at Portsburgh, *Respondents*.

1816.

INCORPORATION OF
WRIGHTS, &C.
v.
LORIMER, &C.

House of Lords, 29th June 1816.

PRIVILEGES OF INCORPORATION—INFRINGEMENT.—The Incorporation of Masons, Wrights, and Coopers of Portsburgh had exclusive privilege of practising these trades within the bounds of Portsburgh. A mason residing beyond the bounds, owned lands within the bounds, and proceeded to build houses thereon, though not a freeman. He had, however, a partner who was a freeman, Held, the working of these persons, in building on their own lands, was not a breach of the privileges of the Incorporation, without prejudice to the question, Whether persons not freemen, in building upon their own lands, can employ masons who are not freemen.

The Incorporation of Wrights, Masons, and Coopers of

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Portsburgh, possessed exclusive privileges within the bounds of Portsburgh, which comprehended the West Port, Potterrow, and Bristo, of carrying on their respective trades, and of preventing unfreemen from working there.

The freemen, on becoming members of the incorporation in order to entitle them to carry on their trades within the bounds, took an oath which, *inter alia*, declared that "they shall not colour or fortify any unfreeman, or pack or peel with him."

It appeared that the respondent, George Lorimer, mason at Laurieston, an unfreeman, had built no fewer than eight houses within the barony of Portsburgh; and he was, at the date of this action, carrying on other four buildings of the same description within the bounds in which they had exclusive privileges,—all these houses being built for sale. It was also stated he had executed a variety of jobs within the barony without acknowledging the Incorporation by paying fine, or submitting to their regulations. He was threatened with legal proceedings; and then he resorted to the expedient of taking into partnership the other respondent, Thomas Miller, an entered member of the Incorporation with the view of enabling him to carry on, without any objection, his trade.

In these circumstances, an action was brought at the instance of the appellants, concluding, 1st, To have it found and declared, that Thomas Miller had no right to enter into co-partnery with any person other than a freeman belonging to the said corporation, to the effect of communicating privileges which belonged to himself alone, and which could not be transferred to a third party, and to have him prohibited from so doing; 2d, That George Lorimer had no right or title to carry on buildings or any other work within the bounds of the said barony, which tended to encroach on the appellants' exclusive privileges; and to have him likewise prohibited from so doing within the bounds of Portsburgh; and, 3d, In regard they had refused to pay the usual fine to the Incorporation to have them decerned to make payment jointly and severally of the sum of £30 sterling, less or more, incurred by them in name of damages for the work thus illegally performed.

In answer, the following defences were stated: "The defender, George Lorimer, some years ago, in conjunction with the other defender, Thomas Miller, purchased a piece of ground lying within the barony of Portsburgh, and,

“ being himself a tradesman, he has built and repaired several
 “ houses on his own property. He is the proprietor of the
 “ grounds, and as such is entitled to use them as he thinks
 “ proper. Nor does the circumstance of his being a mason
 “ fetter him in the management of his property, or bring him
 “ under the control of the pursuers.

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“ With respect to the other defender, Thomas Miller, he has
 “ no interest or concern in this process. It was known to the
 “ pursuers, at the time of his entering into the corporation,
 “ that he was in partnership with George Lorimer; and the
 “ defender has not, by packing or peeling, endeavoured to
 “ screen his partner. The defender, Mr Miller, is a freeman
 “ of this corporation, and therefore entitled to carry on his
 “ trade within the barony of Portsburgh.”

After various procedure before the Lord Ordinary (Armadale), his lordship reported the case to the Court, and the Court, of this date, sustained the defences and assoilzied the July 10, 1812.
 defenders.

On reclaiming petition the following interlocutors were pronounced: “ The Lords having resumed consideration of Feb. 1, 1813.

“ this petition, and advised the same with the answers thereto,
 “ they were equally divided in opinion; and therefore they
 “ supersede farther advising, for the opinion of Lord Armadale,
 “ the senior Ordinary.” , And the cause having been taken up, their Lordships, of this date, then pronounced this Feb. 5, 1813.

judgment: “ The Lords having resumed consideration of
 “ this petition, and advised the same with the answers thereto,
 “ Lord Armadale, the senior Ordinary, having been called in,
 “ they refuse the prayer of the said petition, and adhere to their
 “ former interlocutor reclaimed against: Find the petitioners
 “ liable in expenses of process; appoint an account thereof to
 “ be lodged, and remit the same when lodged to the auditor
 “ of Court to tax and report.”*

Against these interlocutors the present appeal was brought to the House of Lords.

* NOTE.—Opinions of judges:—

Lords HERMAND, GILLIES, ARMADALE, and BALMUTO, were for assoilzieing on the ground that every man might work for his own use, and that the exclusive privilege did not relate to the buying and selling of houses.

The LORD PRESIDENT HOPE differed: “ These men were building for sale. They are carrying on the trade of builders for the market. In the other crafts, shoemakers, &c., it is an encroachment to bring to market the made work of these crafts.

1816.

 INCORPORA-
 TION OF
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Pleaded for the Appellants.—1. If an unfree tradesman, like the respondent, Lorimer, is allowed to exercise his craft as a mason, for instance, in building houses within the barony of Portsburgh, there is an end put at once to the exclusive right and privilege which the appellants' incorporation has hitherto enjoyed within these bounds; and the judgment under appeal will form a precedent which will be completely destructive of the rights and privileges of all the incorporated crafts in Scotland.

It will be observed, that it is no trifling or incidental job of which the appellants complain; nor is it any erection made for the private use and accommodation of the proprietor; what has given rise to the present discussion, is a systematic plan of building a succession of different tenements, of great extent and value, for the *public market*. In the erecting of these houses, Lorimer has appropriated, in whole or in part, the profits of the mason work, to which, as an unfreeman, he had not the shadow of right, and of which by necessary consequence, the members of the corporation are defrauded.

2. If Lorimer is right in the plea that he may use his property as he thinks fit, and erect as many houses as he pleases, it follows that every other proprietor must be entitled to do the same thing. Any individual whatever, though bred up to no craft at all, and wholly ignorant of the mason trade, or any of the other trades necessary for completing a house, may purchase or feu a piece of ground, and after doing so, may have masons, wrights, and other craftsmen, not members of the incorporated trades, and with their assistance erect houses for sale without challenge—a mode of proceeding utterly destructive of the exclusive privileges of all crafts.

3. If the respondent, Lorimer, has encroached on the privileges of the corporation, it necessarily follows that the other respondent, Miller, by carrying on his trade in company with that person, has been guilty of “packing and peeling” in opposition to the rules of the crafts, and the special terms of his own oath of admission. Lorimer, though no freeman, is enabled, through the fraudulent collusion of Miller, to reap all the advantages of a freeman, by exercising his trade as a mason, and putting the profits in his pocket; and therefore

“Just so here. These houses are the ready made work of the trade of masons, wrights, &c. That is an encroachment.”

Lords SUCCOTH and CRAIG had the same views.—*Hume's Collection of Sess. Papers*, vol. 116.

by so packing and peeling he has violated the rules of the Incorporation.

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Pleaded for the Respondents.—It is no encroachment upon the privileges of any incorporation for a person to work for his own behoof, or build upon his own property. The exclusive privileges of any incorporation extend only to prevent artizans from working for hire for the behoof of others, or where there is a guildry, from dealing as merchants, or keeping shops for selling certain commodities. Any individual may, therefore, bake or brew for the use of his own family; kill meat, or employ his servants to do so, although he is not a freeman of any incorporation. He alone derives the benefit of his labour and exertions, and must suffer the loss if he shall happen to be unskilful in his trade. As the respondent, Lorimer, was himself a mason, he naturally assisted in carrying on the houses which he and his partner had resolved to build on the property they had purchased, and whether they shall retain the houses as their property, or let, or sell them, it is evident that they earned no hire as artizans, but worked for their own behoof.

After hearing counsel,

The Lords find, that the working of Lorimer and Miller as masons, in building on their own lands, was not a breach of the privileges of the Incorporation, although Lorimer was not a member of the Incorporation. And with this finding, and without any prejudice to any question which may arise in any other case, Whether persons not freemen of the Incorporation in building upon their own lands, can employ masons who are not freemen without violation of such privileges, it is ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

Journals of
the House
of Lords.

For the Appellants, *Thos. W. Baird, Henry Brougham.*

For the Respondents, *John A. Murray, Henry Cockburn.*

NOTE.—The Act 9 Vict. c. 17, abolishes the exclusive privileges of trading in burghs.