

No 73.

factories, how is it possible to discover, whether the goods brought to market are made by them or by freemen? or whether the inhabitants bespeak what they want from the one or the other, when they live together in the same town, with their houses adjoining to one another? This would disappoint the undisputed rights of an incorporation; and it is much the same, whether a privilege be directly abolished, or reduced to such circumstances as that it cannot be maintained.

The right to foreign trade is a vain pretence for this encroachment. Nothing can be more different than the profit which a merchant is to make by foreign trade, and the profit the artificer makes from his work, and the dexterity he has attained in it.

Every subject has a natural right to make any manufacture that is necessary for his own use; but it does not follow, that he may employ unfreemen for that purpose; or that a merchant may make for exportation.

The case of the Coopers of Perth does not apply. There the fishing company was allowed to make barrels by their own servants for transporting their fish; for the same reason, that a merchant would be allowed to put up his goods in boxes, or in packs, or wrappers, without sending for the wrights to nail them, or the tailors to sew them. These were considered as incidents to foreign trade, but are very different from a whole manufacture, which is here sought to be engrossed. The case of Tenant is rather on this side of the argument: The Court allowed him to make malt for the ale and spirits consumed in his house; but they found he could not make malt to be distilled into spirits, and sold in gross abroad.

'THE LORDS found, That the defenders, as merchants, may make saddles and horse-furniture for their own exportation; but found, That they cannot make saddles and horse-furniture by their foremen, although entered freemen in the incorporation, for sale in the town of Glasgow.'

Act. *A. Pringle, Ferguson.* Alt. *Lockhart.* Clerk, *Home.*
Walter Stewart. Fol. Dic. v. 3. p. 107. Fac. Col. No 14. p. 23.

N. B. A similar judgment was given between the Cordiners of Glasgow and the same defenders. (*Supra.*)

No 74.
 The exclusive privilege of importation, belonging to royal burghs, relates only to foreign commodities; and goods brought

1757. December 16. JOHN SMITH against The GUILDRY of INVERNESS.

JOHN SMITH having imported goods to a considerable value, from London, at the harbour of Inverness, it was challenged by the guildry, as an encroachment on the privilege of the royal burghs; and it was insisted, That the goods were escheated, in terms of the acts of Parliament 1672 and 1690, in favour of the royal burghs. And accordingly the goods were seized, and confiscated.

Pleaded for Smith, in a reduction of the decret of the magistrates and guildry of Inverness, *1mo*, That the pursuer is a burghess of the burgh of Annan; and therefore entitled to deal in foreign trade in any burgh of the kingdom. *2do*, The greatest part of the goods he brought to Inverness were of the growth of England, or of the plantations, and the whole were purchased at London from the manufacturers or importers, in the fair way of trade; and consequently, are not to be considered as foreign goods, since the Union of the two kingdoms, and the communication of goods consequent thereupon. By the 4th article of the Union, it is provided, 'That all the subjects of the united kingdom of Great Britain shall, from and after the Union, have full freedom and intercourse of trade and navigation to and from any port or place within the said united kingdom, and dominions and plantations thereto belonging.' And therefore, as the whole subjects in Scotland are at liberty to import the commodities of England, and to trade therein, as native commodities, no forfeiture can be incurred in the present case, upon either of the above statutes, although the royal burghs, in virtue of the 21st article of the Union, have still the seclusive privilege of foreign trade as to all other countries.

Answered for the Guildry: To the *first*, Although the pursuer has a burghess-ticket from the burgh of Annan; yet, as it does not appear, that he ever paid scot and lot as burghess there, nor does he pretend to have any residence, or to carry on trade in that place, his ticket can give him no right to any privileges in another burgh, of which he has not the freedom. To the *second*, Although, by the treaty of Union, there is a communication of trade between England and Scotland, yet still that trade is to be carried on in a regular manner, according to the standing laws of either nation. And as by the immemorial laws of this country, no person could trade in goods that were not the product of Scotland, unless he was entitled to this privilege as a freeman residing in one of the royal burghs; so it was nowise intended by the treaty of Union, to derogate from this privilege; on the contrary, the privileges of the royal burghs are expressly reserved to them. And as the trade carried on with England and the plantations is now very considerable, had it been intended by the Union, to divest the royal burghs of the privilege they formerly enjoyed with respect to this trade, it would have been just to relieve them of at least one half the burdens they pay to the public on account of their exclusive privilege.

THE COURT was of opinion, that goods brought from London could not be reckoned foreign goods; and therefore

'Reduced the decret of the magistrates and guildry; and found the defenders liable, conjunctly and severally, to the pursuer, in the value of the goods confiscated, and in damages and expences.'

Act. Lerkhart.

Alt. Ferguson.

G. Cockburn.

Fol. Dic. v. 3. p. 105. Fac. Col. No. 71. p. 119.

VOL. V.

11-R

No 74.
from Eng-
land are not,
since the
Union, to be
reckoned
such.