

No 114. THE LORD ORDINARY repelled this reason of suspension, being of opinion that the enactment above recited, permitting the exercise of the trade of weaving in towns to unfreemen, or those who were not burgesses, did not preclude this corporation from enacting by-laws for the government of its own members. The suspenders reclaimed; but the LORDS refused the petition without answers.

Lord Ordinary, *Kennet*. For the Petitioners, *Blair*. Clerk, *Orme*.
Craigie. *Fol. Dic. v. 3. p. 110. Fac. Col. No 211. p. 330.*

1793. *January 15.*

JOHN FINLAY and Others, *against* JOHN NEWBIGGING and Others.

No 115.

A corporation of tradesmen cannot employ its funds, or assess its members, for defraying the expence of supporting general plans of reform.

THE Weavers of Lanark were formed into a corporation, or at least had their privileges confirmed by a seal of cause from the Magistrates of that burgh, in 1660. The object of the institution is declared to be, That 'the said craft might flourish and grow to some perfection, and that the people of the town and country be not damnified by unlawful work, but for advancement of the corporations of the said burgh, and weel of the said craft, and help of any of their distressed brethren;' and they are allowed to exact fines from persons entering into the corporation.

In consequence of several resolutions of the majority, about L. 7 Sterling had been taken from their funds, for the purpose of supporting an application to Parliament for a reform in the government of the royal burghs; and an assessment of 1s. per annum had been laid on each member, in order to replace that sum.

John Finlay and others having refused to continue their annual payment, the corporation resolved, that 'they should be set aside from the trade,' and not called to any meeting while they continued in arrear.

Finlay, and the other excluded members, brought a process of declarator, in which John Newbigging the deacon, and the other members of the corporation, were called as defenders. The material points at issue came to be: *1st*, The powers of the majority in the disposal of their funds; *2do*, Their right of imposing assessments on the members.

The leading arguments on both sides, as to the first point, were similar to those employed in, and reference was made to, the case of Montgomery and Macausland, No 117. p. 2010.

On the second point the pursuers

Pleaded: Corporations were formed for the protection of trade, and the resolutions of the majority are only binding on the rest, when they are necessarily connected with the primary object of the institution, or with the internal government of the society; Erskine, b. 1. tit. 7. § 64.; Perez. in cod. lib. 11. tit. 18. § 18.; stat. 1424, c. 39.; Bacon's Abr. v. Corporation; Peere Williams Reports,

v. 2. p. 209; Viner, v. By-law, p. 319.; 17th June 1715, Magistrates of Aberdeen against Speediman, No 18. p. 1868. The resolution to support burgh reform falls not under either description; and the assessment in question not being authorised by the seal of cause, must be considered as a tax imposed without legal authority; 14th June 1762, Burgesses of Kinghorn against the Magistrates, No 102. p. 1988.; 15th June 1781, Tod against the Magistrates of St Andrew's, No 106. p. 1997.

Answered: If the corporation are entitled to employ a part of their funds in procuring a reform in the burghs, there can be little doubt of their right to impose a small assessment on the members for the same purpose. Indeed, this last mode is more unexceptionable than the other, as there is less risk of its being abused. Accordingly, there is scarcely a corporation in the kingdom which has not assessed its members for various purposes, and in no case has this power been called in question.

At any rate, as the pursuers concurred in imposing the assessment, they are barred *personali exceptione* from making the present objection.

THE LORD ORDINARY found, 'That the corporation may voluntarily assess themselves in such sums of money as their circumstances can admit of, for any useful and lawful purpose, such as an application to the Legislature for a redress of grievances, as in the present case; and in respect of the accession of the said John Finlay and the other pursuers, in laying on the small assessment now complained of, that they are bound to pay their several proportions of the same,' &c.

Upon advising a reclaiming petition and answers, it was

Observed on the Bench: The funds of the corporation were meant for defraying the necessary expences attending the management of their affairs as a corporation, and the maintenance of their poor. These funds, therefore, cannot be employed in supporting speculative plans of reform; nor can a majority bind a minority in such cases. If the majority should next year be of the opposite opinion, could the corporation funds be employed in maintaining both sides of the question? A corporation has no power of imposing new assessments of any kind on its members for the most salutary purpose, unless authorised by statute; see 15th November 1754, Town of Lauder against Brown, No 101. p. 1987.; 29th June 1786, Fergusson against Magistrates of Glasgow, No 108. p. 1999.; 24th February 1790, Riddel against Magistrates of Dumfermline*. But the pursuers may be bound by their accession.

THE LORDS found, That the respondents (Newbigging, &c.) had no right to apply the funds of the corporation, or to assess one another for the purposes mentioned in the interlocutor; but remitted to the Lord Ordinary to enquire how far any individual members had bound themselves by voluntary agreement.

Lord Ordinary, *Ankerville.*
Clerk, *Mitchelson.*

For Finlay, &c. *Robert Hamilton.*

Alt. *D. Catburt.*

D. Douglas.

Fol. Dic. v. 3. p. 109. Fac. Col. No. 10. p. 21.

* Not reported. See APPENDIX.