

1793. *January 16.*JOHN WILSON and Others *against* JAMES SCOTT and Others.

No 116.

Found in conformity with the above.

THE same question which occurred in the preceding case was decided in another, in which John Wilson and other members of the Corporation of Hammermen in Glasgow were pursuers, and the late deacon and masters were defenders.

The dues paid by persons entering into that corporation, are by a charter granted by the Magistrates of Glasgow in 1570, directed to be paid 'unto the box of the craft, to be bestowed upon the common charges of the said craft, and supporting the poor decayed brethren thereof.'

The defenders, when in office, had concurred with a majority of the corporation in voting and paying from the funds L. 20 Sterling, in order to support an application to Parliament for a reform in the government of the royal burghs.

The pursuers complained to the Magistrates of Glasgow, who found, that employing the funds in this manner was perverting them from their proper use, and was *illegal*, and that the defenders were liable, conjunctly and severally to refund the money advanced, reserving to them recourse against each other, and the other members of the corporation who had voted for the measure.

A bill of advocation, complaining of this judgment, was passed; but the cause having been reported by Lord Dreghorn on informations, the LORDS 'repelled the reasons of advocation, remitted the cause *simpliciter* to the Magistrates, and found the raisers of the advocation liable in expences.'

A reclaiming petition was refused, without answers, on the 5th February 1793.

Lord Reporter, *Dreghorn.*Act. Solicitor-General, *Ar. Campbell.*Alt. Dean of Faculty, *Wight, Cullen.*Clerk, *Sinclair.**D. Douglas.**Fol. Dic. v. 3. p. 109. Fac. Col. No 11. p. 23.*1793. *January 16.*JOHN MACAUSLAND and Others *against* JAMES MONTGOMERY and Others, and the MAGISTRATES OF GLASGOW.

No 117.

The Court of Session may control corporations in the management of their funds.—Nature of such funds.

Meaning of the expression *good and pious uses.*

THE Trades-house of Glasgow is composed of delegates from the fourteen incorporated trades of that city. At a meeting of that body, it was resolved to contribute a sum not exceeding L. 500, and in proportion to their funds with those of other corporations, in order to oppose a bill which the Magistrates meant to bring into Parliament, for maintaining the police, and extending the royalty of the city. And at a subsequent meeting, they authorised their collector to advance in the mean time L. 100, if necessary, for that purpose. Against this resolution, a protest was immediately taken by James Montgomery,

and others, and a petition and complaint presented to the Magistrates of Glasgow, who pronounced an interdict prohibiting payment of the money.

In the mean time, the bill was brought into Parliament; counsel were heard against it; and, on the motion of the Member for the city of Glasgow, it was delayed for three months.

John Macausland, then deacon-convener, and others, complained of the judgment of the Magistrates, by bill of advocation, and at the same time brought an action of declarator, in order to ascertain the powers of a majority of the Trades-house in the management of its funds, in which the Magistrates were cited as defenders.

The two actions came into Court at the same time, when Montgomery, &c.

Pleaded: imo, Beside the public revenue of a burgh which is intrusted to the management of its Magistrates and Town-council, there are, in most burghs, common funds belonging to particular classes of men, who associated by seals of cause, or otherwise, for the purposes of trade, and enjoying such exclusive privileges, as were at an early period thought necessary for its protection, have been allowed to exact dues of admission, and to acquire property by donation; these funds are chiefly applicable to the maintenance of their own poor.

The incorporated trades of Glasgow, besides a fund belonging to each, have a common stock, under the management of the Trades-house.

The merchants (in which class are included not only foreign traders, but all who keep a shop) have a similar fund under the management of a similar body, called the Merchants-house.

Certain disputes having arisen between the artificers and merchants, about the extent of their privileges, all parties concerned concurred in referring the points at issue to the Ministers and Magistrates of Glasgow, by whom a decreet-arbitral was pronounced on the 6th February 1605, defining the rights and privileges of the Trades and Merchants-house. This decreet-arbitral, known by the name of the Letter of Guildry, was confirmed by Parliament in 1672.

By this letter*, the power of the Magistrates to review the resolutions of the Trades-house, is expressly acknowledged.

* The clauses of the letter of guildry referred to are:

Sect. 20. That every man out of town, whether merchant or craftsman, being not as yet neither burghess nor freeman within this burgh, who shall enter hereafter, &c. shall pay for his guildry after he is made burghess, thirty pounds Scots, and to the hospital of his calling thirteen shillings and four pennies, except he marry a guildbrother's daughter, who then shall only pay twenty shilling, and forty shilling to the hospital of his calling.

21. Whatever person who is not presently burghess and freeman of this burgh, and enters hereafter burghess gratis, shall pay for his guildry forty pounds money, with forty shilling to the hospital of his calling.

22. And all that is gotten and received from any craftsman and their assistants, who shall enter guild brethren, shall be applied to their hospital and decayed brethren of the craftsmen, or to any other good and pious use, which may tend to the advancement of the commonwell of the burgh, and that by the deacon-convener, with advice of the rest of the deacons.

42. The deacon-convener shall be obliged to produce his book, containing the whole acts and statutes, which he shall happen to set down, before the Provost, Bailies and Council, to be seen and considered by them yearly, when required, and shall crave their ratification and allowance thereto; if otherwise, to be found of no effect.

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Most probably at that time, as at present, the poor of the crafts were maintained partly in their hospital, and partly as out-pensioners. The entry-money was intended for their joint behoof; the portion appropriated to the former was called *Hospital*, that to the latter *Guildry* money. But the management of the whole is, by the letter of guildry, vested in the deacon-convener, and other deacons, to be applied 'to their hospital and decayed brethren, or to any other 'good and pious use, which may tend to the advancement of the commonwell 'of the burgh,' without distinguishing between one part of it and another. They have therefore the same powers over the whole, and if they can employ a part, they may employ the whole in opposing or promoting a bill in Parliament.

But the purposes intended were exclusively charitable. The money is to be applied, *imo*, To the hospital; *2do*, To the maintenance of decayed brethren; *3tio*, To any *other good and pious* use. The third use is described as being of a similar nature with the two former. The terms, good and pious, must be taken in conjunction with each other, and indeed in the language of that day were synonymous.

Accordingly, the whole money received by the Trades-house is thrown into one common fund, which (with a very few exceptions, which are recent, and have not been challenged), has been uniformly employed for the use of the poor, and when the stock was to be laid out either by way of loan, or in the purchase of property, the bonds and rights have always been taken for their behoof.

The practice of the Merchant-house, in the management of their funds, has been precisely similar.

2do, Even supposing the Trades-house might apply their funds to any purpose beneficial to the incorporated trades, their opposition to the police-bill is not of that description.

Answered: imo, In this, as well as in every other civilized country, corporations have been established, some of them, with a view to civil, others merely to eleemosynary purposes. Corporations of artificers, come clearly under the former denomination. The protection of trade was the leading object of their constitution; the spirit of monopoly led them to grasp at an extension of their privileges, and accordingly various statutes were made to defend them, not only against the interference of strangers, but of each other, and of the merchants, who had an association of their own, with similar privileges; *ll. burgorum, c. 18.*; *Stat. Gulielmi, c. 35. 37.*; 1457, c. 67.; 1466, c. 11, 12.; 1487, c. 107, 108.; 1592, c. 154, 156.; 1607, c. 6.; 1621, c. 12.

And as the individuals composing the different trades were too numerous to admit of their meeting collectively to deliberate on matters of common concern, each corporation sent delegates for that purpose. Hence the origin of the Convener, or, as it is called in Glasgow, the Trades-house.

The essence of an eleemosynary corporation, is the revenue bestowed on it by the founder, which must be managed as he has directed; Blackst. Vol. I. p. 465; Raymond's Reports, Vol. I. p. 8.

But no original revenue was bestowed on the corporations of artificers. Their funds have arisen from the contributions of their own members, and the donations of individuals; unless therefore, where the donor has prescribed the mode of application, there is no reason why they should not have the free management of the property thus acquired, or why courts of law should interfere, provided they do not apply their funds to the private use of individual members, but endeavour, *bona fide*, to promote the object of their institution; Blackst. b. 1. c. 18.; Gilbert, New Abr. vol. i. p. 499, 500, 506.: Comyns, vol. i. § 162, 168.; vol. iii. p. 407.; Erskine, b. 1. tit. 7. § 64. ff. l. 6. *de rer. div. l. 1. quod cujuscunque universit*; Peere Williams Reports, p. 207.

As the protection of their civil privileges was the sole intention of their formation, their funds should naturally be chiefly employed in promoting that object, and when they exceed what is necessary for that purpose, a part may very properly be applied to the secondary object of maintaining their poor. But in none of the authorities above quoted, is it said, and indeed it would be unreasonable to suppose that their whole funds must be employed in that manner. Besides, as the funds of the different corporations in Britain amount to some millions, the propriety of applying that sum solely to the use of the poor, may well be disputed. Burn's Poor Laws, Macfarlan's Enquiries.

In this case, the letter of guildry ascertains what part of the entry-money is paid for behoof of the hospital, and what for the guildry, *i. e.* common good of the crafts. The former bears no proportion to the latter, and has annually been expended in purposes of charity. The present funds, therefore, which are very considerable, have arisen entirely from the latter, upon which the poor can have no legal claim.

The fair interpretation of the 22d article of the letter of guildry is, that the funds may be applied to any honest and laudable purpose undertaken for the general good of the crafts, and that the deacon-convener and other deacons shall be the sole judges of the proper occasions.

It was intended by the letter of guildry, to give the Magistrates a power of control over the acts of the Trades-house only, when they were such as might affect the internal police of the burgh; and as there is no instance of any act receiving their ratification, that power has been lost by disuse.

2do, But even granting that the acts of the Trades-house were subject to review, the police-bill was liable to objections, which warrant the opposition made to it.

The LORD ORDINARY ordered informations. At advising which, it was

Observed on the Bench: The funds of public bodies must be applied to the purposes for which they have originally been appropriated. In this case there is a discretionary power in the Trades-house, but subject to the control, first of the Magistrates of Glasgow, and afterwards of this Court.

The merits of the police-bill, as affecting the Trades, must determine the propriety of voting money to oppose it. The objections hitherto stated do not justify that opposition.

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THE LORDS pronounced the following interlocutor: ' Find that the raisers of the advocation have not yet instructed a good cause for opposing the police-bill in question; or that the Trades-house had a good ground for voting money out of the funds for maintaining that opposition; and therefore continue the interdict pronounced by the Magistrates of Glasgow, and decern: Find them also liable in expences, of which ordain an account to be given in; and, in the process of declarator, find that the letter of guildry, dated the 6th February 1605, is still in force, and that the parties must conform thereto; and decern and declare accordingly: Find the pursuers liable in expences, and ordain an account to be given in.'

A reclaiming petition was appointed to be answered. Answers were given in, but the petition was afterwards withdrawn. In these papers, the points chiefly insisted on, were the merits of the police-bill, and the nature of the opposition made to it.

Lord Reporter, *Dreghorn.* For Montgomery, &c. *Solicitor-General, Archibald Campbell.*
For Macausland, &c. *Dean of Faculty, Wight, Cullen.* Clerk, *Sinclair.*

D. Douglas. *Fol. Dic. v. 3. p. 109. Fac. Col. No 12. p. 24.*

See APPENDIX.

S E C T. VIII.

Privilege to Soldiers Exercising Trades within Burgh.

No 118.

1777. *March 25.* TAILORS of GLASGOW *against* MACKECHNY and Others.

THE LORDS found, That the statute 3d Geo. III. c. 8. which allows all officers, soldiers, &c. and also the wives and children of such officers and soldiers, to set up and exercise such trades as they are apt and able for; within any town of Great Britain, does not entitle the daughter of a soldier to confer that privilege upon her husband.

Fol. Dic. v. 3. p. 105.

No 119.

The daughter of a soldier found not intitled to authorise her

1790. *February 24.*

THE CORPORATION of SHOEMAKERS of PERTH *against* ELISABETH MACMARTIN.

ELISABETH MACMARTIN, the daughter of a private soldier, having married Cameron a shoemaker, he, as in her right, under the act of Parliament 3d Geo. III. began to exercise his trade within the town of Perth; on which ac-