NO. 1. It was observed from the Bench: Possession in this case is on the side of the managers, who have all along been in possession of the management, of which the regulation of surgical attendance is an important part, and which accordingly, from time to time, has been variously modified. Indeed, the power of management can reside no where else by the terms of the charter. The great point to be considered, is the good of the hospital, which seems inconsistent with allowing an indiscriminate rotation of surgeons; for in every body of men, however respectable, there must be individuals whom no practise can make perfect, and whom no experience can improve. The contract between the managers and the College of Surgeons, can only be sustained, so far as it is consistent with these principles.—But the majority of the Court seemed also to think, that even by the terms of this contract, though a monopoly was given to the College in general, a power of selection remained with the the managers.

Lord Ordinary, *Dunsinnan.* For Surgeons, *Erskine, Turnbull, Bell.*
Agent, *William Balderston*, W. S.
For Managers, *Lord Advocate Hope, Solicitor-General Blair, Monypenny. Cockburn.*
Agent, *Robert Boswell*, W. S. Clerk, *Home.*

J. *Fac. Coll. No.* 1. *p.* 1.

1803. *March* 11. STIRLINGS, *against* BLACK.

NO. 2. A patentee is not entitled to an interdict upon a patent, the validity of which has not been judicially ascertained.

IN the month of November 1800, John Turnbull *junior* of Cordale Printfield, and John Crooks, chemist in Edinburgh, obtained a patent for the exclusive privilege of using a peculiar mode of bleaching by means of steam. This patent they assigned, by a writ of indenture, to William Stirling and Sons, merchants in Glasgow, who accordingly issued licences to different bleachers, allowing them to practise the patent method upon payment of a certain duty.

Charles Black, bleacher at Springfield, adopted a method of bleaching, which was alleged to be comprehended under the patent, but refused to take out a licence. Upon this, Stirlings presented a bill of suspension, praying for an interdict, which was granted by the Lord Ordinary, upon presenting the patent and writ of indenture. Black did not object to the bill being passed to the effect of trying the question, but contended, that the interdict should be recalled; upon which point the Lord Ordinary reported the cause. The suspenders

Pleaded: A patent from the Crown must be presumed to be valid, until it be shewn to be otherwise; and as there is nothing which makes the possession of an exclusive privilege, an exception from the general rules of law with respect to every other sort of possession, the suspenders are entitled to

an interdict *uti possidetis* until the merits of the case be decided. Their patent is *ex facie* an effectual right, was obtained in a regular manner from those officers of the Crown who are intrusted with such matters, and upon the patentees making oath that the method of bleaching for which it was granted was their own discovery. It was followed by possession; the suspenders having been in use to issue licences to such bleachers as chose to adopt this method. If it shall be found in the end, that the intention is not original, so that the patent be set aside, the suspenders may be liable in damages; but till this be done, they are entitled to an interdict; otherwise a patentee, though his right were perfectly good, would not have any means of making it effectual, but must engage in a law-suit with every one who chose to contravene his exclusive privilege; and as the decision against one could not be effectual against another, he might, in this way lose, in a great measure, the benefit of his patent. By the law of England, slight evidence of a patent is sufficient to establish an exclusive right in the first instance, and it is incumbent upon the contravener to falsefy the specification; Buller, S. i. Term. Rep. 607.; Bac. Abridg. vol. v. p. 592. And by the law of Scotland, a patent is held to be *primâ facie* evidence of a right; Stirlings against Roebuck and Garbett January 20. 1773, (not reported *;) Sinclair against Sutherland, February 12. 1773, No. 28. p. 10610.; Creditors of Jackson against Kemble, February 26. 1793, No. 30. p. 10611. NO. 2.

Answered: A patent may be obtained by any person, and for any thing, upon paying the fees; and as such a privilege is granted altogether *sine causa cognita*, an interdict should not follow until the merits are investigated. If the contrary doctrine were held, and an interdict obtained of course, upon producing a patent, great damage might ensue. Extensive works might be stopped upon the mere allegation of a patentee, that the manufacture infringed upon his privilege. The very essence of a patent is, that the invention be new; and accordingly this condition is *in gremio* of all such grants, without which they are altogether ineffectual. In this case, the novelty of the invention is denied by the respondent, who offers to prove, that it was known and practised in this country before the date of the patent. It is not therefore to be presumed, that it is a new invention; upon the mere averment of the suspenders. The bill may be passed to determine the question; but, in the mean time, the respondent should be allowed to go on with his works, upon finding caution to pay the licence-money to the suspenders, if in the end they shall be found to have any right to it. Accordingly, in a late case, an interdict was refused upon a patent, in such circumstances; Mackintosh against Monteith, July 8. 1800, (not reported.)

* In this case, an interdict was granted in the first instance to the patentees Roebuck and Garbett; yet the patent, after a discussion on the merits, was ultimately set aside by a decision of the House of Lords, May 27. 1774.

NO. 2. There was a considerable difference of opinion upon the Bench with respect to this case. It was conceived by some of the Judges, that, as the patent had been followed with possession, and Stirlings had issued licences to those bleachers who practised their method, an interdict should be granted to defend them in the possession, upon their finding security for any damage that might ensue, if their right should in the end be found insufficient. But the majority of the Court held, that, as patents really pass almost of course, and certainly without any sufficient investigation, it might be attended with dangerous consequences to grant an interdict merely upon producing a patent, as a great manufactory might be stopped, and a vast loss incurred upon false allegations. They accordingly remitted to the Lord Ordinary to pass the bill, but to recall the interdict, upon the respondent finding caution for damages.

Lord Ordinary, *Craig.* For Suspender, *Lord-Advocate Hope, Clerk, Jardine.*
T. Moffat, Agent. Alt. *Solicitor-General Blair, Ross, Cathcart.*
Jo. Grainger, W. S. Agent.

J. *Fac. Coll. No. 98. p. 217.*

1804. *November* 22.

CORPORATION OF WRIGHTS AND MASONS IN PORTSBURGH, *against* CHALMERS.

NO. 3.

King's freemen not limited in the exercise of their trade to the bounds of the Corporation where they reside.

THOMAS CHALMERS, smith in Edinburgh, employed John Fleeming and William Miller, as house-carpenters, to finish the wright-work of a house within the barony of Portsburgh, at a certain rate. Fleeming's father had been a soldier, and Miller had served in the Navy. Neither of them resided within the district of Portsburgh.

The Corporation of Masons and Wrights of Portsburgh presented a bill of suspension and interdict, which passed, reserving the interdict. They also brought an action of damages against Chalmers, for employing these workmen within the district of their exclusive privilege.

The Lord Ordinary in these conjoined processes (15th December 1803) pronounced this interlocutor: 'In respect it is not denied, that the pursuers are a corporation by prescription, and that the house in question is "within the bounds of their exclusive privileges, finds, That they are entitled to maintain the present action; and, as it is not alleged that either "Fleeming or Miller, the wrights employed, though the one is said to be a "discharged soldier, and the other a discharged salior, are resident within