

No. 15. effect of annulling the complaint. There is a great difference between an error in the name of a pursuer and of a defender. A defender, if cited by a wrong name, is not bound to appear, not being obliged to know that he is the person meant to be summoned. But the misnomer of one of a number of pursuers can nowise affect the interest of defenders. In this case, the complainer, whose name has been inaccurately stated, signed the protest against the election and the mandate to insist in the complaint, and acknowledges himself to be the person really meant. Even, therefore, upon the supposition of a misnomer being equivalent to a total omission of the name of a pursuer, the defect is remedied by his sisting himself a party; and as nothing is more easy in common cases, than for a pursuer to amend his libel, all that is necessary in this case, to remove every shadow of objection, is for the complainer to sist himself in his own name as a party to the complaint.

It was conceived by one of the Judges, that the statute did not require the execution of the complaint to take place within two months; that it was enough if the complaint be, within that time, presented to the Court; and that although there was a misnomer in the complaint, it was removed by the party afterward sisting himself. But the majority of the Court held the objection to be sufficient, and that a complaint is not understood to be brought within the statutory period, if it be *ex facie* imperfect, which in this case it was, on account of the omission of the name of one of the councillors of the burgh. They, therefore, without entering into the merits of the case, dismissed the complaint, by sustaining this preliminary objection.

For Complainers, Clerk, W. Clerk.
Alt. Campbell, W. Erskine.

Agent, A. Millar, W. S.
Agent, Ja. Davidson, W. S.

J.

Fac. Coll. No. 148. p. 331.

1804. March 6. WEAVERS OF LANARK *against* PORTEOUS and Others.

No 16.

An exclusive privilege to carry on the weaver craft, does not comprehend un-freemen living within the burgh weaving cotton cloth for their employers without the burgh.

By seal of cause dated 19th January 1660, the weavers of Lanark were incorporated; “and it was ordained, that nae person nor persons within the burgh be admitted or suffered to work as unfreemen of the said craft, or to set up looms, booths or working-houses, without they be admitted by the said craft, under the pain of £5. to be exacted from ilk person contravener *toties quibties.*”

Of late, from the great extension of the cotton manufactures, particularly in Glasgow and Paisley, it has been usual to give out cotton yarn to weavers residing in the country, or even the neighbouring burghs, for the purpose of being manufactured into cloth, which is returned to their employer to be disposed of by him. Among other towns which benefited by this kind of employment, was Lanark, where John Porteous and others living within the burgh

carried on this branch of manufacturing industry, though not freemen of the incorporation. No. 16.

A petition was presented in name of John Anderson, the deacon, to the bailies of Lanark, praying them to grant warrant to the officers of the incorporation, and burgh officers, to impede and hinder the said John Porteous, James Martin, and Robert Paton, or others employed by them, and to poind for the penalty *toties quoties*, and for expenses.

This petition was dismissed by the bailies (24th June 1802), upon advising it with answers, replies, and duplies, as “ the weaving of cotton-cloth to manufacurers has not hitherto been considered as an infringement of the seal of cause in question, which by practice has been found chiefly to apply to customer work.”

A bill of advocation was passed, “ In respect of the nature and importance of the case, which requises it to be deliberately discussed and solemnly decided.”

The Lord Ordinary reported the case, when the pursuers

Pleaded: The object of the Legislature in the constitution of privileged burghs, was to assemble together a body of individuals qualified to improve each other in the art they practise, and with a common interest to defend themselves: The only recompense for this sacrifice of time, labour, and independence, is the right of exercising their craft exclusively within their own bounds. There was another object in these institutions; that the country in general should be served by tradesmen duly qualified, and responsible for their work to some person qualified to judge of it. Such is the language of the *Litera Artificum*, dated 16th April 1556, the great charter granted by Queen Mary to incorporations in general; as well as the express enactment of the statutes 1424, C. 39. 1426, C. 77. 1493, C. 43. 1592, C. 154. They protected not merely the inhabitants of the burghs, but the whole country at large, from the effects of the ignorance of unfreemen residing within burgh. This to the freemen was by far the most important object, as the only inhabitants of royal burghs in those days consisted almost entirely of poor mechanics. It is not enough that these unfreemen weavers work for their employers in other places, and that their work, as they allege, is not intended for the town of Lanark; it is sufficient that they exercise the trade of weaving within the burgh without being members of the incorporation: They thus incur the penalty in the seal of cause. It never was pretended, that an unfreeman could claim a right to exercise his craft, under an engagement not to serve the burgesses or inhabitants, for in general the neighbourhood is the great source of employment. In *Freeland against Weavers of Glasgow*, 29th January 1778, No. 89. p. 1975. it was found, that before any person could weave any silk or cotton cloth within the city of Glasgow, though meant for foreign consumption, he must enter with the incorporation of weavers; which obviates a plea here urged, that the manufacture of cotton-cloth by machinery having been but recently introduced,

No. 16. is a new exercise of the craft, and cannot be comprehended under the incorporation laws.

Answered: The privileges of a monopoly, if recognised by the Legislature, must be supported, but they cannot be extended beyond the original grant, nor by implication made to embrace objects not originally included under it. The right of the freemen is exclusively to work for the consumption of the inhabitants; to supply that market, and to reap all the benefits of their political constitution. The incorporated trades are entitled to work for every employer, whether the employer reside within burgh or not; and unfreemen cannot be excluded from the employment of those who live beyond the burgh. If the employment of the country is open to unfreemen while they reside without the limits of a burgh, no reason can be assigned for depriving them of that employment, if they happen to live within it. Unfreemen, then, are entitled to work up commodities intended for consumption elsewhere, as this does not interfere with the corporation rights; Coopers of Perth against Davidson, July 8, 1752, No. 112. p. 2006. Cordiners of Glasgow against Dunlop, December 3, 1756, No. 72. p. 1948. Maltmen of Glasgow against Tennant, February 22, 1750, No. 65. p. 1935.

The question was taken up by the Court on general principles, though many specialties had been introduced by the parties. It was held that there could be no extension of corporation privileges beyond the original terms of the grant; that they were to be confined to the precise object in view at the time. The manufacturing of cotton cloths in the way now practised by machinery, being a new invention introduced by Sir Richard Arkwright, was therefore held by the Court not to be comprehended under the general term of the "weaver craft," which can apply only to the kind of weaving then known in Scotland. Great doubts were expressed of the propriety of the judgment in the case of Freeland, unless it was decided on specialties which do not appear in the report. But it was not locked upon at all as a precedent for this case. Accordingly,

The Lords "repel the reasons of advocation, and remit the cause *simpliciter* to the Magistrates of Lanark."

Lord Ordinary, *Craig*.
Alt. *Baird*.

Act. *M'Farlan*.
Agent, *Ja. Finlay*.

Agent, *Tho. Chapman*.
Clerk, *Home*.

F.

Fac. Coll. No. 153. p. 343

1805. May 28. MEIKLEJOHN and Others, *against* MASTERTON and Others.

No. 17.

A majority of a corporation must be present to constitute a legal meeting,

THE burgh of Culross, formerly a burgh of barony, was erected into a royal burgh by James VI. in the year 1588. The convention of burghs in 1658, named Commissioners for settling the number and quality of the Town Council, which was fixed at nineteen, the three magistrates included; and the moderator of the Town Council was to have two votes at the yearly election, in the