

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

J.

*Fac. Coll. No. 98. p. 217.*1804. *November 22.*CORPORATION OF WRIGHTS AND MASONS IN PORTSBURGH, *against* CHALMERS.

NO. 3.

King's free-
men not li-
mited in the
exercise of
their trade
to the
bounds of
the Corpora-
tion 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 sailor, are resident within

“ the territory of the pursuers, finds, That they had no right to carry on NO. 3.
“ said work.”

Chalmers reclaimed, and

Pleaded: By various statutes, 3d Geo. III. C. 8., 24th Geo. III. C. 6., 42d Geo. III. C. 69., it has been enacted, “ That all officers, mariners, soldiers and marines, who have been at any time employed in the service of his Majesty, and have not deserted the said service, and also the wives and children of such officers, mariners, soldiers and marines, may set up and exercise such trade as they are apt and able for, in any town or place within the kingdom, without any let, suit or molestation, of any person or persons whatsoever, for or by reason of the using of such trade.” There is here no limitation as to the place where King’s freemen are to exercise their trades: they may exercise their rights within the limits of any corporation they please, their privilege being general. It cannot be necessary for them to restrict themselves to any particular place, to obtain the privilege of a statute, which was intended to prevent the operation of every exclusive privilege, that could injure them. There is a limitation as to the trades to be exercised, but none as to residence.

Answered: The privilege which the Legislature meant to bestow in return for the services of soldiers and sailors, was, that they should enjoy a dispensation from the ordinary rules of admission into the different corporations. But it never was intended that they should have any privilege beyond the regularly admitted members of each corporation. When any person wishes to avail himself of these enactments, he must make choice of his trade, and can only enjoy the rights which belong to the trade to which he has attached himself. Now, it is almost universally required of every craftsman, that he shall reside within the burgh of which he is free, and exercise only one trade. To these regulations, the King’s freemen must also be subject; Muir against Macbean, 19th February 1793, No. III. p. 2004.

The Court altered the Lord Ordinary’s interlocutor, and found, That Chalmers had not acted illegally in employing Fleeming and Miller.

Lord Ordinary *Hermand.*
Clerk, *Pringle.*

Alt. *Hamilton.*

Agent, *Bain Whyt, W. S.*

F.

Fac. Coll. No. 184. p. 412.

1808. *June 10.*

BAKERS OF HADDINGTON, *against* JOHN SMITH.

NO. 4.

THE Incorporation of Bakers of Haddington have by seal of cause the exclusive right of the baker craft within that burgh-royal. John Smith was a person not a member of the corpora-

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