

No 56.

ought to be repute a manufactory, seeing without it, they cannot be made and exported; there is no reason to esteem salted herrings a manufactory more than other fish salted, or salted fleshes, which can never be repute a manufactory, or in the number of those manufactories whereof all the essentials are made up of goods that are not native of this kingdom; and, if it were otherwise, all products of hides, skins, linen cloth or woollen, might be interpreted manufactories, which requires something of foreign commodities to make them be preserved and fit for exportation; which is against all reason, and would include the greatest part of trade of exported goods.—It was *replied* to the second, That declarator ought to be sustained for escheating of the whole goods, because, by the foresaid acts of Parliament in King James V. and Queen Mary's time, it is so declared; and as to the point of escheat never being repealed, albeit by the late act of Parliament it be declared, that the goods seized upon be confiscated, that takes not away the benefit of prior penalties, which they have right to by the law.—THE LORDS having considered all the acts of Parliament, and what was alleged *pro et contra*, did unanimously find, that, as to wine, brandy, and foreign salt, none had the privilege to import them but burgesses of royal burghs and freemen; and that the inhabitants of other burghs could not import foreign salt upon the pretence of a manufactory, and could not buy foreign salt but from burgesses, the custom and the excise being paid; and that unfreemen were not included in the privilege granted to strangers, to import and make offer; so that the act of Parliament anent manufactories did not exeem them, salt herrings not being of that nature; and that the late act of Parliament anent the privilege of royal burghs not giving them any special liberty as to the goods contraverted, they ought to be declared contraveners. As to the *second* point, anent the escheat of all goods, there was debate amongst the Lords, but at last it was carried, few dissenting, that the penalty should only be the escheat of the particular goods imported and not entered; upon that consideration, that the last act of Parliament determining so, ought to be the rule, and, in effect, was inconsistent with the escheat of all their moveable goods who contravened it, *et in penalibus lex non extenditur*, there being no reservation of prior penalties, which was just.

Gosford, MS. p. 590. No 913. & 914.

1697. *January 8.*

MERCHANTS and GUILD-BRETHREN of the TOWN of Stirling, *against* The DEACON CONVEENER of the Trades.

No 57.
Tradesmen,
although
burgesses,
are under
prohibition
by statute,
to carry on

PHILIPHAUGH reported the mutual declarators between the Merchants and Guild-brethren of the town of Stirling, on the one part, and the Deacon Conveener of the Trades on the other. The question arose upon one Cuthbert, a skinner, keeping a merchant shop, not for selling of skins, but for retailing of

brandy, raisins, and other sorts of merchant wares; the Dean of Guild and his brethren having fined him, the trades raised a declarator, that any free craftsman might exercise any sort of merchandise within burghs; and the merchants repeated their counter declarator, that none within burghs royal could vend and retail staple commodities, such as wine, wax, silks, spiceries, wald, &c. but only merchants and guild-brethren. The tradesmen founded their declarator, *first*, On the old acts of Parliament, as act 84, Parliament 1503; act 107, 1540; by which all burgesses of royal burghs, without distinction, whether merchants or tradesmen, may exercise merchandise, by trading in native commodities, and may retail foreign goods, providing they buy them from merchants of royal burghs; and, by the late acts of Parliament in 1672, 1690, and 1693, trade is more enlarged, and its extent communicated to all inhabitants within baronies and regalities, they bearing a proportional burden, and relieving the royal burghs of a part of their taxation; *ergo multo magis* must that privilege pertain to tradesmen-burgesses and indwellers in royal burghs. The merchants declarator was libelled on the 12th act, Parliament 1466; and act 107, 1487, by which tradesmen are expressly prohibited to use merchandise, unless they first renounce their craft; and, by a charter in 1540, from King James V. the guildry of the burgh of Stirling is established with ample privileges.

THE LORDS having heard this case in presence, sustained the guildry's declarator, and rejected the declarator raised by the trades, who appealed to the Parliament, and protested for remeid of law. *See APPENDIX.*

Fol. Dic. v. 1. p. 118. Fountainhall, v. 1. p. 752.

1707. June 26.

TAYLORS of EDINBURGH *against* TAYLORS of CANONGATE.

LORD POLLOCK reported the Taylors of Edinburgh and the Taylors of the Canongate, being mutual declarators of their rights and privileges; those of Edinburgh founded on their seals of cause flowing from the magistrates and town council in 1500, and since ratified in Parliament, giving them liberty to seize upon and confiscate all work made without the town, and imported, seeing the royal burghs pay the sixth part of all the taxation laid on the kingdom, and Edinburgh pays a considerable part of it, and the tradesmen there cannot pay scot and lot, if strangers are allowed to bring their made work into the town; and by their not paying stent, undersell them. The Canongate taylors produced their seals of cause from the Abbots of Holyroodhouse, and Barons of Broughton, and *contended*, That though they be debarred to make to burgess-inhabitants within the burgh, yet no law could fine them for making cloaths to noblemen and gentlemen strangers, who came to Edinburgh to attend their affairs at the session, or otherwise; and the seizing of such cloaths was an act of oppression they had always reclaimed against: Likeas, by an act of sederunt in 1687, the Members of the College of Justice are excemed, and may employ

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merchandise,
within burgh,
unless they
first renounce
their craft.

No 58.
Found that
Taylors in
Canongate
were not en-
titled to work
to citizens of
Edinburgh;
but might to
strangers
temporarily
resident there.