for payment of the 500 merks provided to her, and also concluding against William Brack, elder, as administrator for his son. William Brack, younger, pleaded, That he was a minor, under eleven years of age, and could neither sell lands nor contract debts for payment of the 500 merks, or of the 1000 merks provided to the other two daughters of William Hutchinson: That, if he should die during minority, and without heirs-male of his body, the succession would devolve upon the heirs-male of the body of Isobel: That, in such circumstances, it was unreasonable for personal execution to go against William Brack, younger: That the decreet to be taken could have no other effect than that of a decreet *cognitionis causa*, on which Isobel might adjudge the estate. William Brack, elder, pleaded, that, as administrator-in-law for his son, he could not be personally subjected in payment of debts affecting his son's estate, but that he was nevertheless willing to pay the 500 merks upon an assignation.

The PURSUER ANSWERED,—That, as William Brack represented his grandfather, *passive* decreet must go against him personally,—execution however being suspended till he come of age: And, as to the offer of payment upon assignation, she refused to accept of it.

On the 8th April 1766, the Sheriff "repelled the defences and decerned."

William Brack, elder and younger, brought the cause into the Court of Session by bill of advocation, and repeated the reasons urged before the Sheriff.

It was ANSWERED for the PURSUER,—That, as William Brack takes by the disposition, he must be personally liable, for that is the condition of his right. As to the offer of payment upon assignation to William Brack elder, there is no law which obliges a creditor to take his payment from a third party upon assignation, when he can recover it directly from the debtor himself upon a discharge. The debtor cannot plead that he will not pay, because a third person is willing to purchase his debt.

On the 11th July 1766, "The Lords remitted to the Sheriff, with this instruction, that he see an assignation made out."

1766. *July* 16. CORPORATION of HAMMERMEN in STIRLING, *against* JOHN GOODFELLOW, Watchmaker there.

The privileges of the Corporation of Hammermen in Stirling, found not to extend to the exclusion of a Watchmaker's working there, although he refused to enter a member of the Corporation.

[*Faculty Collection, IV.* 74; *Dictionary*, 1963.]

ON the 6th April 1765, John Goodfellow, watchmaker, was admitted, by the magistrates and town-council of Stirling, "to the liberty and freedom of a burgess, *qua* hammerman, took the burgess oath, and paid the dues of his entry." By entering as a craftsman of one of the incorporations, he paid only half of the dues which he would have paid had he entered as an ordinary burgess. Good-

fellow wrought at his trade of watchmaker, but did not apply to be admitted a freeman of the incorporation of hammermen. On the 13th April 1765 the incorporation passed an act requiring him to enter with them, and, as his essay-piece, to produce the carteret wheel of a watch made by him. In order to force his obedience, the incorporation brought an action against him before the magistrates of Stirling, concluding that he should either make his essay-piece and enter, or that he should be debarred from working as a watchmaker. The magistrates decerned in terms of the libel, and found the defender liable in expenses of process, which they taxed to thirty shillings. Goodfellow brought a suspension of this sentence.

The Lord Minto, Ordinary, on the 17th December 1765, "suspended the letters *quoad* the thirty shillings of expenses, but found the letters orderly proceeded as to the rest, and decerned." And on the 14th February adhered.

The suspender applied to the Court by reclaiming petition, to which answers were put in.

ARGUMENT FOR THE SUSPENDER:—

The suspender used many words to show that the hammermen of Stirling were not an incorporation; but there was evidence produced of their acting as incorporation for time immemorial, and this was held sufficient. The same question occurred some years ago with respect to the tailors of Perth, so that it would be superfluous to state the arguments upon a question which admitted of no doubt. The argument then resolved into this, that the science of watchmaking is totally distinct from the trade of a hammerman; that hammermen cannot force a watchmaker to enter with them, because they cannot take trial of his abilities, a striking example whereof occurs in the present case, where they appointed the suspender to make a carteret wheel, although there be no such wheel in a watch: that, if the suspender desired to act in the corporation of hammermen, he might be obliged to enter with them; but this he does not desire, being as little versant in their trade as they are in the science which he professes; and his entering burgess, *qua* hammerman, was owing to his ignorance,—he took his freedom in such form as the magistrates gave it him.

ARGUMENT FOR THE CHARGERS:

There has not been above one watchmaker at Stirling during any one period, and such watchmaker has always entered with the incorporation of hammermen; the demanding a carteret wheel for an essay-piece was an error of the clerk of the incorporation, who wrote carteret for cantret. There is no reason why a watchmaker should not be considered as a hammerman, in like manner as a silversmith or jeweller is. The suspender, by entering burgess, *qua* hammerman, paid but half dues of what he would have paid had he entered as simple burgess; and since he himself chose to be held as a hammerman, he must either make his essay-piece and enter, or desist from his work.

On the 16th July 1766, "the Lords suspended the letters *simpliciter*."

For the chargers, M'Laurin, Lockhart. *Alt.* D. Armstrong.

OPINIONS.

PITFOUR. Prescription is sufficient to constitute an incorporation. Watchmakers have all along been considered in Stirling as part of the incorporation of hammermen.

AUCHINLECK. The watchmaker business is different from the smith trade. If I could see that the hammermen had ever debarred watchmakers from working unless they entered with the incorporation, there would be more difficulty. A man may be admitted a member of an incorporation in order to have a vote at an election, but he cannot be forced into the corporation when his trade is different from that of all the members of the incorporation.

ALEMORE. Who is it that must try the qualifications of the watchmaker?—"they who cannot so much as spell the name of the essay-piece!"

KAIMES. A man may *choose* to be taken into a corporation: But, here, no proof that he can be *obliged* to enter.

COALSTON. Corporations may be established by usage as well as by grant: When by usage, it must be proved. If multitudes are conjoined in an incorporation, and no proof that any acted without being so received, usage will be held proved. But here there are not examples sufficient to establish such usage.

KENNET. Here all the proof of possession that can be had; for it is proved that the watchmakers in Stirling have, past memory, entered with the hammermen.

PRESIDENT. It is incumbent on the suspender to show, that watchmakers have ever acted in Stirling without being of the incorporation of hammermen.

Diss. Kennet; President.

1766. *July* 18. WILLIAM STEWART, King's Remembrancer in the Court of Exchequer in Scotland; WILLIAM HAY, Writer to the Signet, &c. Creditors of Sir John Douglas of Kelhead, together with THOMAS CARLYLE, Factor, appointed by the Court of Session, upon the Sequestrated Estate of the said Sir John Douglas, *against* GEORGE LOWTHER, Tenant of the lands of Tod-holes, part of the said Sequestrated Estate.

LITIGIOUS.

A Ranking and Sale, without Sequestration, does not bar Ordinary Acts of Management, but bars Extraordinary Acts, such as the granting of a new lease during the currency of a previous one.

[*Sel. Dec. No.* 242; *Dictionary*, 8380.]

THE deceased Sir William Douglas purchased the lands of Tod-holes, and was infeft therein. He executed an entail of his estate, comprehending Tod-holes, in favour of Sir John his eldest son, &c. Upon the death of Sir William, his eldest son Sir John made up titles to the estate of Kelhead, by charter and seasine, but he possessed Tod-holes upon his right of apparency, without making up any feudal titles. In February 1749, Sir John Douglas granted a lease of Tod-holes to George Lowther and William Irvine, for fifteen years. The entry was at Candlemas 1749 to the arable lands, and at Whitsunday