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 looked 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*. Act. *M'Farlan*. Agent, *Tho. Chapman*.
Alt. *Baird*. Agent, *Ja. Finlay*. 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

event of an equality of votes. Nothing was fixed regarding a quorum, or the number necessary to constitute a legal meeting.

No. 17. where no quorum is fixed by the constitution of the corporation.

One of the Councillors having died, and the Town Council being thus reduced to eighteen, a meeting was called for the 28th September 1803, which was attended by nine members of the Council, including Bailie Masterton, who, by the custom of the burgh, as being the Magistrate entitled to preside at that meeting, had the right of giving a casting vote, in case of equality. The other nine councillors declining to attend, Masterton and his friends, (being in one interest, and with his right of giving a double vote if called for,) conceiving themselves to form the majority of the Town Council, proceeded to business.

Upon the 29th September, the day of the Michaelmas election, the two parties made separate elections of councillors; in trying the merits of which, it was necessary to determine, whether the meeting held on the 28th September, was a legal meeting; because if it was a legal meeting, Bailie Masterton had a right, as preses of said meeting, to take the chair on the 29th, and to give a double vote, in case of equality, in chusing the preses of that meeting; whereas, if the meeting of the 28th was not legal, that right belonged to another of the bailies, Bailie Meiklejohn, as having presided at the immediate preceding meeting; and upon this depended the whole after steps of election, the two parties being equal in point of numbers. In support of the objection, that ten councillors ought to have been present at the meeting of the 28th, as being the majority of the corporate body, Meiklejohn and others, in a hearing in presence,

Pleaded: In all corporations, consisting of a definite number, the rule is, where nothing determinate is fixed in the constitution of the burgh, that the majority of the whole body must be present to form a legal meeting. It never can be supposed, that any number, however reduced the members of the corporation may be, shall be sufficient for the purposes for which the charter was granted; and that the survivors, by refusing to fill up the vacancies as they happen, might monopolize the whole government of the burgh to themselves. In all cases, to do a corporate act, the major part of the members must be present; 29th July 1747, Mason and others against Magistrates of St. Andrews, No. 20. p. 1271; 24th December 1803, Macnab against Martin, APPENDIX, PART I. *voce* APPEAL, No. 2.; 25th June 1792, the King against Bellringer, Term. Rep. iv. p. 810; 6th May 1795, the King against Miller, Term. Rep. vi. p. 268.

Answered: In a corporate body, where the charter is silent regarding a quorum, it is expedient and necessary that all acts of administration should be effectual, if done by any number lawfully assembled, provided due premonition has been given to the rest; Bacon's Abr. *voce* Corporation; Kyd on Law of Corporations, vol. i. p. 422; 1741, Attorney General against Davy, Atken's Reports, p. 212. But even if the presence of a majority of the corporation were required to do a corporate act, this can only be a majority of the existing members. It seems preposterous to maintain, that the major part of a body,

No. 17. which does not exist, shall be requisite to form a legal meeting; it can only be a majority of those who in reality compose the corporation, and have it in their power to act; otherwise it would follow, that if by death or resignation, the number was reduced below its original majority, the burgh would be disfranchised. In the present case, this singular consequence would follow, that if the nine separating members had appeared, as they ought to have done, upon the 28th, the nine who did attend, one of whom being entitled to preside, and to have the casting vote, would have had a majority in their favour; but that by separating from the others, they annul what was done at a meeting, which, had the whole attended, would have just decided in the same way. Were this objection sustained, in no case whatever, where the members of a corporation are equally divided, would the party not entitled to the casting vote ever allow themselves to be outvoted, as they need only withdraw, and prevent the remaining members from forming a legal meeting.

The Lords "found, (5th March 1805,) That there was not a majority of "councillors present to constitute a legal meeting of council;" which was adhered to, (28th May 1805) by refusing a reclaiming petition, without answers.

For the Complainers, *H. Erskine, J. Clerk.* Agent, *D. Spottiswoode, W. S.*
Alt *Solicitor General Blair, Burnet, Boyle.* Agent, *Ja. Horne, W. S.*
Clerk, *Pringle.*

F. *Fac. Coll. No.* 210. *p.* 469.

1807. *December* 11.

HAMMERMEN of CANONGATE, *against* JOHN CARFRAE, Coachmaker in Canongate.

No 18.
A coachmaker may make ironwork for carriages within burgh, though not a member of the Incorporation of Hammermen.

JOHN CARFRAE was a coachmaker in the Canongate of Edinburgh. In order to execute the iron work of the carriages which he sold, he kept a smithy, and employed a number of men in it working on iron. Neither himself nor his men were members of the Corporation of Hammermen of Canongate. Robert Douglas, deacon, and John Ross, boxmaster of the corporation, presented a petition against him to the Sheriff of Edinburghshire, in name of the corporation, praying to have him compelled to enter into it. The Sheriff's interlocutor was, "In respect that it is not alleged that Mr. Carfrae carries on the "smith work for any other purpose than coachmaking, Finds that the petitioners cannot compel him to enter."

The pursuers presented a bill of advocation. The interlocutor of the Lord Ordinary on the bills was, "Repels the reasons of advocation: Remits the "cause simpliciter to the Sheriff, and decerns." The cause then came before the Inner-house by petition and answers.