the breach may well have taken place before the delivery of the declaration. The case in Styles is very strong.

Demurrer over-ruled; but the Court gave the defendant leave to amend, on payment of costs.

KIRK *against* NOWILL AND BUTLER. Tuesday, Jan. 31st, 1786. A corporation, created by letters patent, with a power of making bye laws, cannot make any laws, to incur a forfeiture; neither can a corporation created by Act of Parliament, unless such a power be expressly given.

This was an action of trespass for seizing and taking a quantity of forks, the property of the plaintiff.

The defendant pleaded, 1st, the general issue.

The second plea stated, that the town of Sheffield, in which the said trespass is supposed to have been committed, was within the lordship and liberty of Hallamshire in the county of York. That the Company of Cutlers was incorporated by stat. 21 Jac. 1, c. 31. That that Act directed that one master, two wardens, six searchers, and four and twenty assistants, should be annually chosen out of the said company to govern the said corporation. That it was by the said Act of Parliament further enacted, "that no person or persons using the said arts or manufactures within the liberty of Hallamshire, or six miles compass of the same, should at any time hereafter make, or cause to be made, any knives, or knife-blades, shears, scissors, or sickles, except he or they did put steel into the edges of them, upon pain to lose for every such offence 10s. and the wares so deceitfully made; to be seized and recovered by the master and wardens of the said company for the time being, and to be levied, distributed, and employed to the use of the said corporation, to and for the relief and benefit of the poor of the said corporation." And that the forks mentioned in the declaration were forfeited and seized under that Act.

**[119]** The third plea set forth the incorporation of the said company by the said Act of 21 Jac. 1; that it was, by the said Act, further enacted, "That no person using the said mystery or crafts, or any of them, within the said lordship or liberty, or six miles compass thereof, should at any time thereafter strike, grave, or use, upon his knives, or the wares before mentioned, any more marks than one, and that to be such as should be first appointed as aforesaid unto him by the said masters, wardens, and searchers of the said company for the time being, or the greater number of them; upon pain to forfeit and lose, for every time that he should offend therein, all such goods so marked, and the sum of 40s. to the master and wardens of the said company for the time being, to be employed to the use of the said corporation to and for the relief and benefit of the poor of the said corporation;" and that the forks mentioned in the declaration were forfeited and seized under that Act.

4thly, and for further plea, &c. the defendants say, "That the said plaintiff ought not to have or maintain his said action thereof against them, because they say that the town of Sheffield, in which the said trespass is above supposed to have been done, is, and at the respective times hereinafter mentioned, and also at the said time when the said trespass is above supposed to have been done, was, a certain place, situate and being in and parcel of the lordship and liberty of Hallamshire in the said county of York, and mentioned in the Act of Parliament and bye-law hereinafter mentioned. And the said defendants further say, that by a certain Act of Parliament made and passed in the Parliament of the late King James 1. at a session thereof holden at Westminster in the one and twentieth year of his reign, entitled, 'An Act for the Good Order and Government of the Makers of Knives, Sickles, Shears, Scissors, and Other Cutlery Wares, in Hallamshire in the County of York, and the Parts near Adjoining,' it was enacted (among other things) by His said late Majesty, the Lords Spiritual and Temporal, and the Commons in that Parliament assembled, and by the authority of the same, that all persons using to make knives, blades, scissors, shears, sickles, cutlery wares, and all other wares and manufactures, made or wrought of iron and steel, dwelling or inhabiting within the said lordship and liberty of Hallamshire, or within six miles compass of the same should be from thenceforth and thereafter might be in deed, and in name, one body politic, perpetual, and incorporate, of one master, two wardens, six searchers, and **[120]** four and twenty assistants and commonalty of the said Company of Cutlers of the lordship of Hallamshire in the county

of York. And that they, by the name of Master, Wardens, Searchers, and Assistants, and Commonalty, of the Company of Cutlers of Hallamshire in the said county of York, might be, and by virtue of the said Act, were really, actually, and fully incorporated, created, made, and erected one body corporate and politic, to all intents and purposes, and should have perpetual succession, and be called and known by the name of Master, Wardens, Searchers, and Assistants, and Commonalty of the Company of Cutlers in Hallamshire in the county of York. And further, that it might be for ever thereafter lawful to the said master, wardens, searchers, and assistants, in and upon the Feast Day of St. Bartholomew the Apostle, in every year, yearly, or at any other time in the year, to nominate, elect, choose, and swear, one master, two wardens, six searchers, and four and twenty assistants, to be chosen out of the said company, to order, rule, and govern the said Corporation and Company of Cutlers during the term of one whole year then next ensuing, and until there should be others chosen in their room. And for the due ordering and better maintaining of the said company, and for the better relieving and employing of the poor of the said trade, it was ordained and enacted by the authority aforesaid, that it should and might be lawful to and for the said master, wardens, searchers, and assistants of the Company of Cutlers aforesaid, or the greater part of them, and their successors from time to time, to constitute, ordain, make, and establish, such laws, acts, orders, ordinances, and constitutions, which to the said master, wardens, searchers, and assistants, or the greater part of them, according to their discretions, should be good, wholesome, profitable, honest, and necessary, for the good order, rule, and government of the said master, wardens, searchers, and commonalty in their several arts aforesaid, and of all other their apprentices and servants in the same arts, manufactures, and professions, aforesaid; so that the said ordinances and constitutions were not any way repugnant and contrary to His Majesty's Royal prerogative, or to the laws of this realm. And that the said master, wardens, searchers, and assistants of cutlers aforesaid, or the greater part of them, having made such laws, institutions, ordinances, and constitutions, might appoint and impose such reasonable pains, punishments, and penalties, by fine or amerciament, or by either of them, upon all those [121] which they should find offending contrary to those laws, Acts, orders, ordinances, and constitutions, as unto them the said master, wardens, searchers, and assistants of cutlers, or the greater part of them, should be thought meet and convenient, according to the quality of the offence: and the same fines and amerciaments to levy, receive, and have, to the use of the said corporation, to and for the relief and benefit of the poor of the said corporation, as by the said Act of Parliament (among other things) more fully appears. And the said defendants further say, that after the passing of the said last-mentioned Act of Parliament, and long before the said time when, &c. to wit, on the 31st day of July 1780, at Sheffield aforesaid, in the county aforesaid, the master, wardens, searchers, and assistants of the said company for the time then being, for the good order, rule, and government of the master, wardens, searchers, and commonalty of the said company in the said several arts, did ordain, make, and establish a certain, good, wholesome, profitable, honest, and necessary bye-law, Act, order, and constitution, and did thereby (amongst other things) ordain, order, and establish, that it should and might be lawful to and for the searchers of the said corporation or company for the time being, or any three or more of them, at all times thereafter in the day-time, to enter into the respective workshops and warehouses of any the respective members or freemen of the said corporation or company within the said lordship or liberty, or six miles compass thereof, to search for deceitful and unworkmanly cutlery wares, and other wares, made or wrought of iron or steel, and all such deceitful and unworkmanly wares as should be there found upon such search, to seize, take, carry away, break, and destroy; and the iron and steel thereof coming to sell and dispose of for the relief and benefit of the poor of the said corporation, as by the said bye-law, Act, order, and constitution more fully appears. And the said defendants further say, that the said bye-law, Act, order, and constitution, so made as aforesaid, afterwards, to wit, on the first day of August 1780, at York, in the county aforesaid, was examined and approved of by the Right Honourable Alexander Lord Loughborough and Sir Beaumont Hotham Knight, two of His Majesty's Justices of Assize for the Northern Circuit, at the assizes held at York, in and for the said county of York, on the 29th day of July 1780, according to the form of the statute in that case made and provided. And that the [122] said bye-law, Act, order, and constitution, afterwards,

that is to say, on the same day and year last aforesaid, at Sheffield aforesaid, within the liberty of Hallamshire aforesaid, was duly published and made known. And the said defendants further say, that after the making of the said Act of Parliament and bye-law, to wit, at a meeting of the then master, wardens, searchers, and assistants of the said company, held at Sheffield aforesaid on the 26th day of August 1784, the same being a convenient time of the year for that purpose, one William Fowler, the then master, together with the then wardens, searchers, and assistants of the said company, did nominate, elect, and choose the said Thomas Nowill, together with one Thomas Tillotson, one Joseph Ward, and one William Smith, to be four of the searchers of the said company for the year then next ensuing, to order, rule, and govern, the said Corporation and Company of Cutlers during the term of one whole year then next ensuing, and until there should be others chosen in their room, according to the form and effect of the said last-mentioned Act of Parliament. And the said Thomas Nowill, Thomas Tillotson, Joseph Ward, and William Smith, afterwards, to wit, on the 2d day of September, in the year last aforesaid, at Sheffield aforesaid, were duly sworn to execute the said office of searchers, and then and there took upon themselves the burden of the same office, and became, and at the same time when, &c. were and still are such searchers as aforesaid. And the said Thomas Nowill, Thomas Tillotson, Joseph Ward, and William Smith, being such searchers as aforesaid, he the said Thomas Nowill, together with the said Thomas Tillotson, Joseph Ward, and William Smith, three of the other searchers of the said company as aforesaid, and the said Joseph Butler as their servant, and by their command, and in their aid and assistance, at the said time, when, &c. the same being in the day-time, did enter into a certain work-shop of one Matthew Davenport, then situate and being at Sheffield aforesaid, within the said liberty of Hallamshire, in the said Act mentioned, he the said Matthew Davenport then and there being a member of the said corporation, to search for deceitful and unworkmanly cutlery wares, and then and there found the said forks in the said declaration mentioned; and because the said forks were then and there deceitful and unworkmanly cutlery wares, (that is to say, made of cast iron, and brittle, weak, and badly tempered,) the said [123] Thomas Nowill, together with the said Thomas Tillotson, Joseph Ward, and William Smith, the searchers aforesaid, and the said Joseph Butler, as their servant, and by their command, and in their aid and assistance, at the said time when, &c. seized, took, and carried away, the said forks; and afterwards, to wit, on the same day and year last aforesaid, at Sheffield aforesaid, delivered the same to the master and wardens of the said company, to be broken by them, and the iron thereof coming to be employed to the use of the said corporation, for the relief and benefit of the poor of the said corporation, as it was lawful for them to do for the cause aforesaid; which are the same seizing, taking, and carrying away the said goods and chattels, in the said declaration mentioned, and converting and disposing thereof to their own use by the said Thomas Nowill and Joseph Butler above supposed to have been done, whereof the said plaintiff hath above complained against them, &c."

Replication took issue on the first plea.

To the 2d, 3d, and 4th pleas, the plaintiff replied de injuriâ suâ propriâ; and the issues thereon.

Verdict for the plaintiff on the three first issues, and for the defendants on the last.

Wilson obtained a rule, last term, to shew cause why judgment should not be entered for the plaintiff in this cause on the general issue, and the two first justifications, notwithstanding the verdict for the defendant on the last justification, the same justification being insufficient in law.

This motion was obtained upon two grounds;

1st, that a power, claimed by a corporation of creating bye-laws to incur a forfeiture, was bad in point of law (*a*), unless founded on an ancient custom within a city, or unless such power was expressly given to them by Act of Parliament. 2 Inst. 47, and 8 Rep. 125.

2dly, that the statute, on which this bye-law was founded, had appointed a specific punishment for the offence which had been committed, viz. by fine or amerciament, which precluded the corporation from inflicting any other.

(*a*) Vid. 1 Wils. 63; Barn. 133, 267.

Sir Thomas Davenport, Lee, and Chambre, now shewed cause, and argued upon the distinction between corporations created by letters patent, and by Act of Parliament. That the cases cited only tended to shew that no forfeiture could grow by letters patent; but that this corporation was created by Act of Parliament, which had given them the power of inflicting such a penalty. For though [124] that particular part of the Act, which was stated in the 3d plea of justification, did not shew an express power given to them of seizing the wares in question under the Act, yet such an authority was clearly founded upon other parts of it, which were set forth in the two first pleas of justification on this record; by which it appeared that persons residing within the limits of the corporation were prohibited from making any knives, &c. unless they put steel into the edges of them, and fixed the proper marks upon them, "upon pain to lose, for every such offence, ten shillings in the one case, and 40 shillings in the other; and the wares so deceitfully made to be seized and recovered by the master and wardens of the said company, &c."

That all Acts relative to trade being public Acts, and this being such an one, the Court were bound to take notice of every part of it, even though it were not verbally set forth. 4 Co. 76.

But supposing that the Court could not go out of the third plea of justification, yet there was enough of the statute set forth in that plea to warrant the bye-law, under which this seizure was made. It appeared from thence that the company of Hallamshire were empowered to make bye-laws, and to enforce them by fine or amerciament; and a forfeiture of this kind might be considered in the nature of a fine, equivalent to the value of the goods. Such a construction was agreeable to the spirit of the statute, and to the purposes for which it was enacted. And then this bye-law was not unreasonable; which was a strong circumstance in its favour. 1 Mod. 202. 2 Mod. 56.

The counsel on the other side, Wilson, Wood, and Law, were stopped by the Court.

Lord Mansfield, Ch.J. A corporation, in the definition of it, is a creature of the Crown, created by letters patent; and such a corporation, with a power of making bye-laws, cannot make any such law to incur a forfeiture. Those corporations, which are created by Act of Parliament, have no other additional powers incident to them, than those have which are created by charter, unless they be expressly given. No such extraordinary power of making bye-laws to incur a forfeiture appearing upon this plea to have been conferred, it is impossible for the Court to say, that this bye-law can be supported by the Act.

Buller, J. This bye-law is bad, considered in every point of view.

Taking it generally as a bye-law, creating a forfeiture; the Act of Parliament not having given this corporation a power to make such a bye-law, it is bad on that ground.

[125] Then, it has been said that this bye-law is supported by the Act: but so far from it, they have expressly negatived such a power; for the Act prescribes in what terms bye-laws shall be enforced, namely, by fine or amerciament; therefore the corporation is precluded by the Act from inflicting any other punishment.

There never was such an idea before, as the counsel against the rule have suggested, that one plea might be supported by what was contained in another. Each plea must stand or fall by itself; they are as unconnected as if they were on separate records. And though it be true that Acts of Parliament relating to trade in general are public Acts, yet a statute which relates only to a certain trade is a private one. Therefore the Court cannot now take notice of any other part of this Act of Parliament than that which is set out in this plea; for it is not a public Act.

Rule, for the plaintiff to have leave to enter up judgment notwithstanding the last plea, absolute (*a*).

THE KING *against* THOMAS SPENCER CROWTHER. Wednesday, Feb. 1st, 1786. Conviction on 5 Ann. c. 14, quashed, because the witness was not sworn and examined in the presence of the defendant. It is not sufficient to read over the deposition

(*a*) Vid. post, 266.