

to see it limited. The only objection here is as to the power of the granter; and *that*, after the years of prescription, will be presumed.

JUSTICE-CLERK. The sound construction of the Act 1617 is of great moment. The question here is, Whether is the objection extrinsic or intrinsic? If there is no sasine, there is no right; but here the objection is altogether extrinsic. It is an objection to the title to grant dispensation. How can that be good, when an objection to the right of the holder is not good?

On the 10th August 1778, "The Lords found that the defender had produced sufficient to exclude;" altering their interlocutor of \_\_\_\_\_.

Act. D. Rae. Alt. Hay Campbell, D. Armstrong.

No vote; but Ellick and Hailes against the interlocutor.

1778. November 28. LIEUTENANT-COLONEL CAMPBELL *against* ROBERT SCOTLAND.

INTRINSIC QUALITY—*PACTUM ILLICITUM*.

[*Faculty Collection, VIII. 80; Dictionary, 9530.*]

BRAXFIELD. The pursuer has not condescended sufficiently to entitle him to insist in this action. If he had produced evidence of money having been put into the hands of Scotland, Scotland could not have defended himself by saying that the money was put into his hands for the purpose of bribing, at least unless he could prove his allegation.

HAILES. I doubt as to this. Scotland, in his letters, never charges Colonel Campbell in this shape: his defence is owing to the ingenuity of his lawyers. There is enough under his own hand to found a count and reckoning. It is true that the money was put into his hands without receipt; but may a person, when money is put into his hands without receipt, say, "I got the money for bribing a borough. I have bribed, and *there* is an end of accounting?"

COVINGTON. This is the most improper, irrelevant, and ill-judged prosecution that ever came before a court of justice. I do not say that a *political agent* is a character which *eo ipso* implies any thing wrong, but the whole circumstances of the case show that Scotland was employed to bribe. The manner of giving the money implies a *turpis causa* concerted. Here is a *depositum*: you cannot prove the terms of the depositions by witnesses.

MONBODDO. In the younger part of my life I should have had a great doubt of supporting such an intrinsic quality; but things are greatly altered. The rotten part of our constitution, the small boroughs, has become so rotten that it threatens a gangrene to the body politic. If the money was advanced for purposes which may be avowed, the defence of *turpis causa* is not intrinsic.

ALVA. There is no evidence here on either side. When money is to be accounted for, the charge must be supported.

KENNET. I would have the interlocutor run thus:—"Finds that no action lies." We have evidence before us for what purpose the money was given.

KAIMES. There is no written document of the money having been received, and therefore we must take whatever account Mr Scotland chooses to give. But Colonel Campbell does not acknowledge or plead that he ever gave a sixpence for bribing. I may *suspect*, but I cannot *presume* against him.

ELLOCK. In deciding causes, I do not like to go out of the road. Colonel Campbell claims a debt, upon what *medium*?—only upon Scotland's acknowledgment. Scotland acknowledges that he received it; but says that it was for the purpose of bribing. This is an intrinsic quality: Colonel Campbell has brought no evidence that Scotland was to account.

JUSTICE-CLERK. The allegation of the pursuer is, that he impressed money into the hands of Scotland for making an interest in the burgh of Dunfermline, but he does not condescend in what way the money was to be applied: his counsel *guess* at the purposes, but they do not *assert* that such were the purposes. But parties admit that no special directions were given. Scotland does not say that Colonel Campbell authorised him to apply the money in an illegal manner; and Colonel Campbell denies that he did. I cannot therefore go the length of giving an opinion that there is evidence of Colonel Campbell having employed Scotland to use the money illegally. Here there was a confidential trust created, and the money was impressed into Scotland's hands, without any document: there was such confidence established between them, that there was no obligation to account.

On the 28th November 1778, "The Lords found, from the circumstances of the case, that no action lies." (And found that there was no evidence of a corrupt bargain as to Colonel Campbell.)

*Act.* J. Boswell, J. M'Laurin, Ilay Campbell. *Alt.* B. W. M'Leod, D. Rae. *Reporter*, Braxfield. Hearing.

*Diss.* as to the general point, Hailes.

*Diss.* as to the evidence against Colonel Campbell, Monboddo, Covington. (Kennet hesitated.)

1778. December 18. JOHN JACKSON *against* JOHN MONRO, Procurator-Fiscal of the Court of Admiralty.

Jurisdiction of the High Admiral Court in questions of Prize.

[*Faculty Collection*, VIII. 82; *Dict.* 7522.]

HAILES. The raiser of the advocacy totally misunderstands the sense of the statute: it is briefly this,—His Majesty's subjects in America had risen in rebellion, and it became necessary to order their effects to be seized, as the effects of enemies. The king could not declare war against his subjects, so as to put them in the predicament of enemies; *that* would have been a solecism