

S E C T. XII.

Premium for procuring an office. Bond among Electors. Money for bribing Electors. Payment of an Elector's Debts in a political contest.

1759. February 9. KATHARINE YOUNG *against* GAVIN THOMSON.

MR KER, being Member of Parliament for Edinburgh, and consequently a man of weight, procured for his wife's brother, Gavin Thomson, an office in the excise, with a salary of L. 35 yearly, till he should be better provided for; but took from him an obligation in the following terms, 22d September 1751, 'I Gavin Thomson, permit clerk, seeing that I stand greatly obliged to Mr Ker for the office I enjoy, I bind and oblige me so soon as I receive a yearly free salary of L. 50 Sterling in the excise, to pay out of the same to Isobel Young, my aunt, or to any other he shall appoint, secluding their heirs and assignees, the sum of L. 10 Sterling yearly.' This obligation being put in suit, it was *objected*, That the Court ought not to sustain action upon it, because it is *contra bonos mores* for a man to take a premium to use his interest. One's interest ought always to be applied in favour of the deserving, and not to hire it out for gain. It was generally the opinion of the Court, that if Mr Ker had taken the sum payable to himself, the paction would have been *contra bonos mores*; but not where it is taken by him payable to a friend or relation, such as Mrs Young, who was his wife's aunt. It was *answered*, That this distinction opens a wide door for defeating the objection altogether; it is but taking the obligation in name of a confidant, or some person under authority. This is the present case. Mrs Young's claim depends entirely on the will of Mr Ker; because he, when he pleases, can appoint the pension to be paid to another. *2do*, If the using one's interest for advancing the fortune of another ought to be gratuitous, like lending one's credit to obtain money to another, it is equally *contra bonos mores* to take a gratification, whether to himself, to his son, to his wife, or to his wife's aunt; for every gratification of this kind is equally averse to the true spirit of benevolence, and tends equally to make a man misapply his interest, by engaging for the least worthy, who have no other means but such *douceurs* to recommend themselves. THE COURT notwithstanding sustained process, and decerned.

Fol. Dic. v. 4. p. 28. Sel. Dec. No 152. p. 208.

No 70.
Obligation taken by one who procured an office for another, to pay an annuity to the officer's aunt, sustained.

No 70.

* * * This case is reported in the Faculty Collection :

DUNCAN CAMPBELL, Captain of the city-guard at Edinburgh, granted an obligation to Mr Ker, Member of Parliament for this city, to pay, while he enjoyed his office of Captain of the guard, and of keeper of the wardrobe in Holyroodhouse, to Gavin Thomson, permit-clerk of excise, L. 19 : 10s. yearly, or such lesser sum as, when added to his salary in the excise, amounted to L. 50 yearly ; and Gavin Thomson became bound to the same Mr Ker, to pay yearly to Isabel Young, his aunt, who was likewise aunt-in-law to Mr Ker, or to any person he should name, L. 10 Sterling, while his income amounted to L. 50, as above, or exceeded it, by his being preferred in the excise.

Campbell raised a reduction of the first obligation against Thomson, and Isabel Young charged Thomson for payment of the L. 10 yearly on the second.

Campbell's obligation was reduced, as being *contra bonos mores* ; and Thomson having suspended Young's charge, *pleaded*, That his obligation was a part of the transaction with Campbell, and was equally *contra bonos mores*, therefore null.

Both obligations were bribes, which Mr Ker took from Campbell and Thomson, for his interest used in procuring them offices, or keeping them in office, and which it was optional to him to bestow on Isabel Young, or any person he should name.

The ruinous tendency of the sale of offices to the state, renders it unlawful ; and such transactions are prohibited, and subjected to penalties, by the law of England, 12th Richard II. c. 2. ; and 6th Edward VI. c. 16.

Pleaded for Young ; There is no statute in Scotland prohibiting the sale of offices ; on the contrary, offices in the army, and many civil offices, are sold publicly, and some have been adjudged saleable by this Court. Neither is it clear, that such sales have a bad tendency.

But this transaction is not a sale of an office ; for Mr Ker had it not in his power, either to confer an office in the excise on Thomson, or deprive him of one. He stipulated nothing for himself ; he only burdened Thomson, whom he had favoured by using his interest, with L. 10 yearly, for the maintenance of his own aunt, to do which he was bound by a natural obligation. It was a most pious transaction on the part of Mr Ker ; and so far from being *contra bonos mores*, that it is confirmed by the practice of the courts of England, in cases not so urgent as the present ; Hill. 1693, Symonds *versus* Gibson, 2d Vern. 308. ; Laurence *versus* Braiser, 1st Chan. case 72. noy. 142.

“ THE LORDS found Thomson liable for the L. 10.”

Act. *And. Pringle.*

Alt. *J. Dalrymple.*

Clerk, *Pringle.*

J. C.

Fac. Col. No 167. p. 297.