

On the 31st July 1778, "The Lords found that Mr Munro might draw on his arrestments, or on his inhibition, in his choice;" altering Lord Ellick's interlocutor.

Act. Ilay Campbell. *Alt.* W. Wight.

1778. August 10. JAMES SCOT *against* JOHN BRUCE STEWART.

PRESCRIPTION—UNION—SASINE.

Vide supra, 13th December 1776.

[*Fac. Coll. VIII.* 163 ; *Dict.* 13,519 ; *Supp. V.* 558.]

COVINGTON. I would not incline to depart from the judgment of the House of Lords in the cases from the counties of Forfar and Linlithgow. It is the prerogative of the Crown to make an union. Sir Thomas Craig seems to question this, but the general opinion is otherwise. It is established, by the judgment of the House of Peers, that this privilege is communicable; but when the Crown's charter authorises infeftment in a particular place, I deny that the Crown's disponee can authorise infeftment in any other place: yet I think, that as infeftment has been taken, and the years of prescription have run, that all challenge is cut off. After the years of prescription, I will presume every thing, even a dispensation from the Crown.

BRAXFIELD. I do not say that the erroneous practice in Orkney and Zetland has been so general as to make me depart from what I understand to be the law; but there has been such a practice as is sufficient to make me cautious in throwing loose the titles of these countries. The true question here is, Whether is the objection to the sasine extrinsic or intrinsic? If *intrinsic*, then the sasine is null from the beginning, and it cannot grow better by being older. A sasine may be a good sasine, though not taken on the grounds of the lands, in consequence of a dispensation from the Crown; if this dispensation is once established, it is in the power of the proprietor to communicate it to the persons to whom he makes partial dispositions. Before prescription is run, the person who produces the title must remove the objection to it; but, after the prescription, the objection comes too late: it is the great purpose of prescription to support bad titles: good titles stand in no need of prescription.

KAIMES. You must still begin with a good title of possession. The charter here is very good, but the sasine is *ex facie* defective. The holder must show that it is not defective.

MONBODDO. It is established in practice, that the Crown can give dispensation; but I am clear that a subject cannot authorise the taking sasine any where else than on the lands. As to the erection of an earldom, that makes no difference: still the sasine must be in the place which the charter mentions. It alters the case greatly, that this challenge has not been brought till after the years of prescription. The Act 1617 is our *magna charta*; I should be sorry

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.