

not be sufficient to screen the defender from accounting; but, as the receipt of the money rests on the acknowledgment of the defender, the *causa dandi* is an intrinsic quality, and cannot be separated from the other parts of it. The judgment was,

“Sustain the defences, and assoilzie.” See RECOMPENCE.

Lord Ordinary, *Braxfield*. Act. *Ilay Campbell*. Alt. *Raz, M^rLeod*. Clerk, *Tait*.
Fol. Dic. v. 4. p. 29. Fac. Col. No 46. p. 80.

1786. February 1. Mrs DALRYMPLE against SHAW.

Mrs DALRYMPLE pursued Shaw in an action of declarator, for having it found, That as, at the solicitation of her friends, the office of keeper of the register of sasines for the county of Ayr had been obtained for him by the Member of Parliament for that shire, on a condition stipulated by her, of his paying to her, and her children after her, five sixth parts of the fees and emoluments of that office; so he was now bound to fulfil that condition. When the cause came to be advised, this question was suggested, Whether such a paction was *contra bonos mores*, and so not actionable. Afterwards, in support of the objection, the defender

Pleaded, The stipulation in question is inconsistent with the nature of a public office. The salaries or emoluments pertaining to such, are not to be deemed merely adequate to the service performed, but constitutionally requisite to preserve to the public officer that degree of independence, and that rank in life, which are suited to the extent of the trust committed to him. In another view, it is virtually a bribe received, or a corrupt bargain entered into for the procurement of an office of public trust; a thing reprobated by express statute in England, 12th Richard II. cap. 2., as it is by the spirit of our common law, the abuse not seeming to have ever risen so high in this country as to demand the special interposition of the Legislature. In a case similar to the present, action was denied on the principles now stated; 9th February 1759, Young *contra* Thomson, No 70. p. 9525.

Answered, The statute quoted, and others posterior, such as 5th and 6th Edward VI. cap. 16. afford proof, that by the common law of England, the sale of public offices was not *malum in se*; otherwise those enactments would have been superfluous. Nor is there any reason to suppose our own common law different in that respect. The case of Young and Thomson must have been decided on some other ground than that of *pactum illicitum*; since of two transactions to which that objection was equally applicable, one only was annulled by the judgment of the Court. In fact, nothing is more openly sold than are public offices every day; the clerkship of the High Court of Justiciary, for example, the depute-clerkships of the bills, the sheriff-clerkships.

No 72.

No 73.

Is it *pactum illicitum* if a person stipulate a benefit to himself, or to another, for obtaining for a third an office from Government?

No 73.

The Court were agreed, That it is *contra bonos mores*, and illegal, for those in power, procuring from Government, offices to other people, to stipulate a sum of money, or any of the emolument, either to themselves, or to third parties. Some of the Judges thought the present case substantially of the same nature; while others strongly urged this distinction, That here the Member of Parliament bore no part in the transaction in question; and as there is nothing wrong in obtaining a public office from favour to a particular individual or family, so it must be right to do so in the manner best suited to the beneficent end proposed.

It became unnecessary, however, to decide the cause on that general ground; the evidence of the alleged stipulation having been found insufficient. But as the defender declared his willingness to grant a part of the pursuer's demand, to that extent,

THE LORDS decerned against him.

Reporter, *Lord Rockville.* Act. *Dean of Faculty.* Alt. *Blair, Corbet.* Clerk, *Home S.*
Fol. Dic. v. 4. p. 28. Fac. Col. No 252. p. 386.

1786. February 16.

WILLIAM MORRIES, and Others, *against* JOHN WILSON, and Others.

No 74.

The payment, by one political party, of an elector's debts, in order to counteract the designs of the opposite party, who had instigated the creditor to the execution of ultimate diligence, not construed to be bribery and corruption.

IN a complaint under the statutes of the 16th Geo. II. cap. 11. and 14th Geo. III. cap. 81. against an election of magistrates and council of the burgh of Dunfermline, it was

Objected, That the votes of certain persons had been obtained by means of bribery and corruption; for that, they being utterly bankrupt and under ultimate diligence, their debts had been paid by the political party in favour of which they had given their voice. To this objection, it was

Answered, That the creditors of those voters had been instigated by the opposite party to execute that diligence, in order to prevent them from exercising their right of election; and therefore that such payment of debts was justified by the restoring of electors to a state of freedom, of which, from sinister motives, they had been deprived.

The Court, adopting the argument of the respondent,
 "Repelled the objection, and dismissed the complaint."

Act. *Abercrombie, Maconochie.* Alt. *Wight, Cullen* Clerk, *Menzies.*
S. Fol. Dic. v. 4. p. 28. Fac. Col. No 259. p. 395.