

tuity, to be paid by the party whose proof it is. It is observed in the same case, that the Court had decided, that arbiters were not *de jure* entitled to any recompense.

No 41.

*Fol. Dit. v. 4. Kilkerran. D. Falconner.*

\* \* \* This case is No. 1. p. 5729. *voce* HONORARY.

1761. November 17.

JOHN, &c. MACEVERS *against* HUGH ROSS of Kilravock, Esq; Advocate, Sheriff-depute of the Sheriffdom of Ross.

IN the year 1754, Mr Rose, by his commission, constituted Roderick Macever to be his substitute in the Island of Lewis, which makes a part of the shire of Ross. No mention was made of any salary in this commission. Macever acted above two years and half as Sheriff-substitute, and then died.

No 42.  
Salary due to a Sheriff-substitute, tho' not stipulated.

The pursuers, as executors to him, brought an action against Mr Rose for a salary, at the rate of L. 25 a-year, for the time their father had acted as Sheriff-substitute.

*Pleaded* for the defender : No salary stipulated ; *ergo* none due.

*Answered* for the pursuers, That there is no evidence that their father accepted of the office without a salary : That the office was exceedingly troublesome ; and the presumption was, that no man would accept of a troublesome office without some recompense.

*Observed* from the Bench : That it was *contra bonos mores* to employ a substitute without a salary, and might be attended with very bad consequences.

THE LORDS found the salary due.

*Act. Munro.*

*Alt. Scrymgeour.*

*Reporter Lord Woodhall.*

*Fol. Dic. v. 4. p. 218. Fac. Col. No 6. p. 145.*

1766. January 16.

JOHN BULLMAN, Attorney, *against* ALEXANDER EARL of GALLOWAY.

JOHN BULLMAN, as administrator of the late James Aitkenson, attorney in Morpeth, brought an action against the Earl of Galloway and his son Lord Garlies, setting forth, That Lord Garlies having, in spring 1760, offered himself as a candidate to represent the borough of Morpeth in Parliament, he and his father had employed the late Mr Aitkenson, attorney there, to manage the election, as was vouched by many letters from them to him, which he accordingly did, with great zeal and ability, and the wished success ; and, therefore, concluding for

No 43.  
Attorney acting as a political agent, not entitled to a recompense for his trouble, without a previous bargain.

No 43.

L. 500, as a recompence to Mr Aitkenson, who had dedicated his whole time to that business, from June 1760 to April 1761.

*Pleaded* in defence; Though Mr Aitkenson's activity and address were of great use to the defenders, yet there was no foundation for this action; Mr Aitkenson was not even employed as an attorney, nor had he acted as such. A noble family in the neighbourhood of Morpeth had long had the command of that borough; but, at the last general election, an opposition was formed, into which Mr Aitkenson keenly entered. His conduct proceed, or must be presumed to have proceed, from public spirit or political views; and he could no more have claimed a pecuniary recompence from the defenders, than any other person who exerted himself and his interest in their behalf on the occasion. A political agent can have no claim for such recompence without a previous bargain, except as to his disbursements. What Mr Aitkenson laid out, has been paid to the pursuer a year ago, when he settled accounts with the defender, which shews his then sense of the matter, and was a virtual discharge; and Mr Aitkenson never made any demand for a consideration for himself, nor did he make any entry in his books as if any such had been due him. All he expected was, that Lord Garlies would use his interest to procure him an office in chancery.

THE COURT was clear, That a political agent has no claim to a recompence for his trouble, without a previous bargain; and therefore,

'THE LORDS sustained the defences, and assoilzied.'

*Act. Dav Dalrymple.*

*Alt. Rae.*

*J. M.*

*Fol. Dic. v. 4. p. 219. Fac. Col. No 32. p. 55.*

No 44.

1778. November 28. CAMPBELL *against* SCOTLAND.

COLONEL CAMPBELL employed Mr Scotland as his political agent for the purpose of carrying the burgh-election of Dunfermline in Campbell's favour; and for that purpose he gave Scotland L. 3000 Sterling, of which, as he owned, L. 800 was for Scotland's own trouble and services, and the rest was to be employed in giving entertainments to the electors, doucours, &c. After the business was over, Campbell pursued Scotland to account, who defended himself, on the the ground that the money was truly given to him to bribe the burgh, and that he had applied it accordingly; and this being *turpe pactum*, could produce no action. THE LORDS assoilzied the defender.

*Fol. Dic. v. 2. p. 219. Fac. Col.*

\* \* \* This case is No 72. p. 9530. *voce* PACTUM ILLICITUM.