

The Commissaries sustained the objection. A bill of advocation having been presented, the Lord Ordinary, at desire of parties, reported the case on memorials.

No. 3.

The defender held the objection to be completely relevant, and proved, Stair, B. 4. Tit. 43. § 9; Erskine, B. 4. Tit. 2. § 25; 21st January 1797, Bell against King, No. 210. p. 16786; and various other cases, *vide* WITNESS.

The pursuer disputed the import of the proof, and contended, that the witness should be admitted *non nota*, particularly as there was a *penuria testium* as to the facts expected to be established by his evidence; 19th December 1786, Scott against Caverhill, No. 204. p. 16779.

The Court, without hesitation, supported the judgment of the Commissaries.

Lord Ordinary, *Meadowbank*.

Act. Connell.

Alt. *Ar. Campbell*.

D. D.

Fac. Coll. No. 247. p. 561.

1806. December 2. MACALPINE against MACALPINE.

No. 4.

In an action at the instance of Robert Macalpine, spirit-dealer in Glasgow, against James Macalpine his brother, the object of which was to set aside two dispositions to certain heritable subjects, which it was alleged the said James had obtained in his own name, when he acted really for behoof of his brother, a proof was allowed by the Lord Ordinary. In the course of this proof, the pursuer Robert Macalpine adduced William Bogle, writer in Glasgow, as a witness.

An agent may be adduced as a witness by the party for whom he acts.

Mr. Bogle had originally been employed as agent for the defender in the business, which gave rise to the present dispute, but for several years had not acted in that capacity. He had afterward been employed by the pursuer, and had acted as his country-agent in the present process. The facts, however, about which Mr. Bogle was proposed to be examined, occurred prior to the commencement of his agency for the pursuer.

The defender objected to his admissibility as a witness, on the footing of his being the confidential agent of the pursuer, and the commissioner took his evidence, but ordered it to be sealed up, to be disposed of as the Court might determine.

The Lord Ordinary, after hearing parties, appointed the deposition to be opened, and to be made part of the proof.

The defender reclaimed to the Court, and quoted the cases, Adam against Braco, July 2d, 1743, No. 176. p. 16745; Lindsay against Ramsay, July 12th, 1743, No. 168. p. 16746; Govan against Young, June 18th, 1752, No. 188. p. 16764; where the objection of agency was sustained.

No. 4. The pursuer referred to the case of Maclatchie against Brand, November 27th, 1771, No. 200. p. 16776. where the Court of Session sustained the objection of agency, but which was reversed by the House of Peers.

The petition was refused without answers.

Lord Ordinary, *Meadowbank*.
Alt. *Cockburn*.

Act. *Jardine*.
Agent, *J. McGlashan*.

Agent, *Jos. Cauvin, W. S.*
Clerk, *Buchanan*.

J.

Fac. Coll. No. 261. p. 583.