KENNET. I would have the interlocutor run thus:—"Finds that no action lies." We have evidence before us for what purpose the money was given.

KAIMES. There is no written document of the money having been received, and therefore we must take whatever account Mr Scotland chooses to give. But Colonel Campbell does not acknowledge or plead that he ever gave a sixpence for bribing. I may *suspect*, but I cannot *presume* against him.

ELLIOCK. In deciding causes, I do not like to go out of the road. Colonel Campbell claims a debt, upon what *medium*?—only upon Scotland's acknowledgment. Scotland acknowledges that he received it; but says that it was for the purpose of bribing. This is an intrinsic quality: Colonel Campbell has brought no evidence that Scotland was to account.

JUSTICE-CLERK. The allegation of the pursuer is, that he impressed money into the hands of Scotland for making an interest in the burgh of Dunfermline, but he does not condescend in what way the money was to be applied: his counsel *guess* at the purposes, but they do not *assert* that such were the purposes. But parties admit that no special directions were given. Scotland does not say that Colonel Campbell authorised him to apply the money in an illegal manner; and Colonel Campbell denies that he did. I cannot therefore go the length of giving an opinion that there is evidence of Colonel Campbell having employed Scotland to use the money illegally. Here there was a confidential trust created, and the money was impressed into Scotland's hands, without any document: there was such confidence established between them, that there was no obligation to account.

On the 28th November 1778, "The Lords found, from the circumstances of the case, that no action lies." (And found that there was no evidence of a corrupt bargain as to Colonel Campbell.)

Act. J. Boswell, J. M'Laurin, Ilay Campbell. *Alt.* B. W. M'Leod, D. Rae.

Reporter, Braxfield. Hearing.

Diss. as to the general point, Hailes.

Diss. as to the evidence against Colonel Campbell, Monboddo, Covington. (Kennet hesitated.)

1778. *December* 18. JOHN JACKSON *against* JOHN MONRO, Procurator-Fiscal of the Court of Admiralty.

Jurisdiction of the High Admiral Court in questions of Prize.

[*Faculty Collection, VIII.* 82; *Dict.* 7522.]

HAILES. The raiser of the advocation totally misunderstands the sense of the statute: it is briefly this,—His Majesty's subjects in America had risen in rebellion, and it became necessary to order their effects to be seized, as the effects of enemies. The king could not declare war against his subjects, so as to put them in the predicament of enemies; *that* would have been a solecism

in politics. But the Legislature did the same thing in an indirect way: the statute declared, that their effects should be forfeited *as if they were the effects of open enemies*, and that *they should be so deemed in all Courts of Admiralty*; that is, the American rebels shall, by statute, be considered as enemies as much as the French or Spaniards could, by royal proclamation; and no one will doubt that the ships and effects of enemies, by royal proclamation, might be condemned in our High Court of Admiralty. The statute makes no difference, and could not mean to make any difference between one Court of Admiralty and another.

ALVA. The Judge-admiral with us has a jurisdiction, not as *Vice-admiral* but as sitting in a supreme court.

COVINGTON. Here was a rebellion which would not justify a seizure without an Act of Parliament. The High Court of Admiralty has a supereminent right in England: it grants letters of reprisals, and also protections, which the Scottish Court of Admiralty cannot: I think that the statute meant to confer the jurisdiction on the High Court of Admiralty in England.

ELLIOCK. The judge who spoke last confounds the High Admiral or Commissioners of Admiralty with the judges of the English Court of Admiralty. The High Court of Admiralty can never judge of persons and things without his territory.

BRAXFIELD. I look back to the statute 1681, which gives a sole and exclusive jurisdiction to the Judge-admiral of Scotland. In maritime and seafaring causes, no judge has even a cumulative jurisdiction with him; and this jurisdiction is recognised by the Articles of Union. An Act of the Parliament of Great Britain might alter this; but I will never *presume* any such alteration. The legislature only meant to put the Americans on the footing with enemies. That the Judge-admiral in Scotland had a jurisdiction in common wars is admitted; and there is no reason for supposing that he has not also a jurisdiction in a war of a more uncommon nature. As to the question, How this cause could be taken out of the hands of the English admiral?—the answer is, As he has no cumulative jurisdiction with the Scottish, he cannot interfere.

JUSTICE-CLERK. If there had been words in the statute taking away a jurisdiction established by the law of Scotland and the Articles of Union, I should have submitted; but I do not see any such words. On the contrary, I see the very reverse. There is an opinion of Lord Mansfield and Dr Lee, that the High Court of Admiralty in England had an antecedent right of condemning the goods of enemies; and that the Court of Admiralty in Scotland had a like right in the former wars. Commissions, such as those in the statute in question, were issued to the Court of Admiralty in England, but never to the Court of Admiralty in Scotland; and yet that Court frequently condemned the ships taken from the enemy. Had such commissions been necessary in Scotland, it is strange that none of the parties, whose ships were condemned, should have ever discovered it. It is quite anomalous to carry on a trial *extra territorium*. The ship was seized in the Frith of Clyde: *who* is it that can deliver up the ship unless some person within the jurisdiction of Clyde?

GARDENSTON. The Court of Session and the Court of Justiciary are no better established by the Articles of Union than the Court of Admiralty is: nay, it even stands on the same footing with presbyterian church government, [for

which he expressed a vehement admiration and esteem: This raised a laugh in the audience.]

PRESIDENT. The Act of Parliament did not mean to make any alteration in the law.

On the 18th December 1778, "The Lords refused the bill of advocation, on the merits."

Act. Ilay Campbell. *Alt.* J. Monro.

Reporter, Stonefield: unanimous, with the exception of Lord Covington.

1779. *January* 12. JOHN M'FARLANE *against* GEORGE BUCHANAN.

EXHIBITION *AD DELIBERANDUM.*

In an exhibition *ad deliberandum,* a charter of adjudication and infeftment, in favour of the defender in possession, not sufficient to bar the pursuer from insisting for exhibition of the grounds of the charter.

[*Fac. Coll., VIII.* 89; *Dict.,* 3991.]

HAILES. It is a singular thing to bring an action *ad deliberandum,* at the distance of 47 years from the death of the former proprietor: I do not see why the common course of a trust-bond and an adjudication in implement has been departed from.

KAIMES. There is no declarator of expiry of the legal: the security is not rendered *property* by the lapse of the ten years.

COVINGTON. The predecessor who died in the right, has never been denuded. Here there is nothing sufficient in law to bar the exhibition *ad deliberandum*: though it must be confessed that the action comes uncommonly late.

On the 12th January 1779, "The Lords ordained George Buchanan to produce the adjudication in his person, with the *grounds* thereof, and conveyances thereto;" adhering to Lord Justice-Clerk's interlocutor.

Act. W. Baillie. *Alt.* Ilay Campbell.

1779. *January* 13. JAMES PASLEY *against* THOMAS RATTRAY.

MANDATE.

Action of Relief denied to a mandatory who had furnished goods on an open account, without taking a bill, as stipulated in the mandate, to furnish them.

[*Faculty Collection, VIII.* 91; *Dictionary,* 8228.]

COVINGTON. It is the same thing whether a bill was taken or not: *that* was for the security of the person who advanced the money.