

1774. July 15 MAGISTRATES of PITTENWEEM *against* ROBERT ALEXANDER and OTHERS.

COMMUNITY—*PACTUM ILLICITUM*.

A bond granted by magistrates in office for a sum to defray the expense of their own defence, against a complaint on the head of bribery and corruption, (in which the complainers prevailed,) to the person employed by them to conduct that defence, and by him assigned to the person whose political agent he was, and where the principal was in the knowledge of corrupt stipulations made in his behalf with those magistrates, on which the complaint was founded, was found not binding as a debt upon the burgh.

[*Fac. Col. VI. 339; Dict. 2527.*]

GARDENSTON. A defence *bona fide* made will be a charge against the estate of the person whose estate is administered; but that will not apply to an action for malversation, in which judgment was ultimately pronounced against the persons administering. I should think that a person, *bona fide* lending to magistrates *de facto*, would be safe, although the election should be afterwards reduced.

MONBODDO. The question is, Whether is this bond binding on the community? I think not, nor even on the parties contracting. The money was not laid out in defending the privileges of the burgh.

JUSTICE-CLERK. Were this bond to be sustained against the burgh, it would ruin the patrimony of all the burghs in Scotland. The bond, although in the person of Robert Alexander, cannot be effectual, for the evidence shows that Robert Alexander had Borthwick for his agent, and his brother William Alexander as the conductor of the election. What is done by a person's known agent is held to be done by the person himself.

AUCHINLECK. The present question gives me satisfaction. It is happy to see the wages of iniquity, still outstanding, fall to be paid by the offending persons. Strange if we should make the burgh of Pittenweem pay for the corruption of their predecessors. This would be a certain method of encouraging that corruption, which, notwithstanding all our decisions, so fatally prevails.

PRESIDENT. It gives me great pleasure to see the Court unanimous on this question. The opinion given is agreeable to law and to morality. An innocent community is sought to be fleeced by the corruptors and the corrupted. Shall any law say they should reap the benefit of their own wrong?

On the 15th July 1774, "the Lords found that the community cannot be subjected in payment, and therefore reduced *quoad* it; reserving to Mr Alexander to insist against the signers of the bond, and to the signers their defences."

*Act. J. M'Laurin. Alt. R. M'Queen.
Reporter, Coalston.*