

the complaint anent the said arrestment was moved in the Court of Session." And No. 175:  
having afterwards, on a representation, formally taken the question to report, it  
was solemnly determined.

Pleaded for Mr. Mackenzie, or Cadboll in his name: It is a rule in humanity that  
no man can be obliged to discover secrets intrusted to him, because otherwise all  
trust would be at an end amongst mankind: This applies to lawyers and agents,  
Stair, B. 4. T. 43. § 9. and so has been the constant practice, 15th July 1680, Earl  
of Northesk against Cheyne, No. 16. p. 353. observed by Fountainhall, 21st  
December 1675, Creditors of Wamphray against Lady Wamphray, No. 12.  
p. 347. and 10th February 1737, Scot against Lord Napier, No. 27. p. 358.  
it was found no question could be put to the defender's lawyers, but what could  
be put to himself. The distinction is groundless betwixt facts coming to the  
agent's knowledge before, and after process, since advice is generally given before,  
and is then most necessary.

Pleaded for Genzies: It is the duty of all members of society to bear evidence  
when called on; and even the nearest relations may be obliged to depone on facts  
that cannot otherwise be proved. Lawyers, it is true, are not obliged to discover  
any defects in their clients' rights, or any secret communicated to them as such,  
which, by being discovered, might cut them out of a right standing in their per-  
son; but this does not apply; for the only question proposed to be asked is, at  
whose desire he raised the letters of arrestment? And that lawyers are bound to  
answer such questions has been found, 14th November 1628, Beatson against  
Laird Grange, No. 5. p. 342. and 1st February 1666, ——— against Rollocks,  
No. 8. p. 344.

The Lords found agreeably to the former interlocutor.

It was observed by some of the Court, That Mr Mackenzie raised the letters,  
not as agent, but as a clerk of the Court; and therefore he ought to depone at  
whose desire he raised them.

Act. *J. Macleod.*

Alt. *H. Home.*

Clerk, *Justice.*

*D. Falconer, v. 1. p. 32.*

1745. February 21.

BURGH OF INVERKEITHING.

On the verbal report of an Ordinary on the witnesses, Whether in the contra-  
verted election in the burgh of Inverkeithing, now depending, one that was a par-  
ty could be adduced as a witness by the other party; it was observed that the  
question had, in election-matters, been determined in the affirmative as often as it  
had occurred; and accordingly the objection was repelled.

*Kilkerran, No. 8. p. 599.*

No. 176.