No. 9. 1737, Jan 9, 19. MURRAY *against* COWAN.

A CASE was reported by Lord Minto of a suit at the informer's instance upon the act against gaming 9*no Annæ* for triple value. A defence was proponed upon the statute of limitations in Queen Elizabeth's time, which respects future as well as bygone penal statutes. Answered, That the statute of limitations did not reach Scotland thought it regulated the act 9*no Annæ* in England. The Lords repelled the defence. Dun, Monzie, Murkle, *et ego*, did not vote. 10th December 1736.

The question between these parties marked 10th December last was it seems only upon a report for advice, and this day I am told, (for I was in the Outer-House) the Lords on bill and answers adhered to the Ordinary's interlocutor. Royston was for finding that the statute of limitations did not extend to the gaming act, but they say the interlocutor is general adhering.

No. 10. 1740, Jan. 25. CORNELIUS NELSON *against* BRUCE of New Grange.

THE Lords found the game act 9*no Annæ* not competent against the onerous indorsers to a bill of exchange, agreeably to two judgments given in the Courts of Westminster, and indeed to the principles of law.—N. B. Though once we admitted the cedent's oath against the assignee upon that act, yet that interlocutor was stopped on a reclaiming petition and never determined.

No. 11. 1740, Nov. 6. WILKIE *against* M'NEILL.

THE Lords were of opinion, that setting aside the question, Whether bargains concerning run goods are at all lawful? the interlocutor in this case was wrong, because the brandy truly was delivered by Wallace the seller to Wilkie, the joint purchaser, which was the same with delivery to M'Neill. The President indeed thought the *merx* was *illicita* and not binding. But the Court were all of a different opinion, and therefore found M'Neill liable for the sums in the bill, with a proportionable abatement effeiring to the ease that Wilkie got from Wallace; and they thought the decision betwixt Young and Gilchrist and the act on which it was founded, has no connection with this case because of the delivery.—18th November The Lords adhered without answers.

No. 12. 1740, Nov. 7. ROBERT BIGGAR *against* SIR ROBERT PRINGLE.

See Note of No. 15. *voce* ARRESTMENT.

No. 13. 1741, Feb. 18. STEWART *against* HYSLOP and CLERK.

THE Lords found a reason of reduction upon the game act 9*no Annæ* not proveable by witnesses against an onerous indorsee to a bill of exchange.

No. 14. 1743, July 1, 12. COULL *against* CRAMMOND.

The question was, Whether the L.4. 11s. part of the bill of L.9. 11s. granted in 1729 fell under the game act? for if it did not, then that bill and interest to the date of the

L.30 sterling bond in October 1733 with the L.20 sterling then advanced, was more than the sum in that bond, and therefore though the two small bills for L.3 sterling and 10s. were undoubtedly game debts, yet the abatement given was more than these two sums, and no part of the sums in the bond could be said to be won at play; and the fact as to the L.9. 11s. was that L.5 was an old debt, L.4. 11s. was lent in the tavern, but before Crammond and Brown began to play, and Graham swears before he knew that they were to game, Crammond having called him Graham to another room for that end, though it would seem that Crammond, Brown, and he had been playing at high junks even before that loan of the L.4. 11s., which determined the Court to think that the L.9. 11s. bill fell under the the game act;—and therefore they adhered to Drummore's interlocutor, and reduced the L.30 sterling bond *in toto*. 12th July Refused a reclaiming bill and adhered.

No. 15. 1745, July 16. MAGNUS BAIN *against* THOMAS ANDERSON.

WE found as we did 6th November 1740, (No. 11.) that run brandy is not *merx illicita*, and that if it is bought and received action lies for the price.

No. 16. 1745, Jan. 25, Feb. 8. LORD LOVAT *against* FRAZER of Strowie.

AT advising this reclaiming bill for Strowie, and answers for Lovat, Strowie's procurators produced the record of Chancery, containing a remission to Lovat, Strowie, &c. in 1700, and thereupon several changed their opinion, *inter quos ego*, and the interlocutor was altered. 8th February, Adhered.

No. 17. 1745, July 12. EARL PETERBORROW *against* DR ABERCROMBIE.

THIS question was about the validity of an English double bond of L.1600 by Lord Peterborrow, then Lord Mordaunt, to the Doctor in 1730. The case was, that the Doctor gave Lord Mordaunt L.210, for which this double bond was granted, the condition whereof was, that if Lord Mordaunt should die before his grandfather, Lord Peterborrow, (who was then about 75) or if in two months after Peterborrow's death, he should pay L.840 sterling, the bond should be null. This bond was quarrelled as usurious; and 2dly, on the head of fraud. We generally inclined to restrict it as *contra bonos mores*, to the principal and interest; only the President thought there should also be some allowance for the real chance; but it being suggested that such a bond has been lately set aside in Chancery, we delayed for a month, that some evidence might be brought of this. Arniston thought it would be no great stretch to find it usurious, 9th June 1745. *Vide* 12th July, where precedents from the Chancery were laid before us.

Now (12th July) a condescendence was laid before us of precedents from the Court of Chancery, and thereupon the Court unanimously restricted the bond to the capital and interest; but then we thought the money should be readily paid;—therefore we found the bond might be redeemed upon payment of principal truly advanced, and interest thereof, any time before Whitsunday next, without any costs before this time; but in case of not payment at that time, decerned for the whole sum redeemable by payment of principal and interest, and costs hereafter to be incurred.