

No 64. that no action lies upon the said missive; assoilzies the defender, and decerns; and finds expences due."

Lord Ordinary, *Kames*.

For Thomson, *James Grant*.

Clerk, *Kirkpatrick*.

For Mackaile, *Geo. Fergusson*.

R. H.

Fol. Dic. v. 4. p. 27. Fac. Col. No 21. p. 51.

1774. July 14.

WILLIAM MAXWELL of Dalswinton *against* ALEXANDER BLAIR of Dunrod, and the TRUSTEES appointed by the deceased HUGH BLAIR of Dunrod, Father to the said ALEXANDER.

No 65.

In a question relative to the validity of a bill, granted as the amount of a wager lost upon a horse-race, the Lords found, that the 14th act, Parliament 1621, relative to game debts, was not in desuetude.

THE statute 14th, Parliament 1621, *inter alia*, enacts, That, wherever any person wins above 100 merks, within 24 hours, upon cards, dice, or horse-racing, the surplus shall, within 24 hours thereafter, be consigned in the hands of the Kirk-Treasurer, if in Edinburgh, or of the Kirk-Session in the country, to be applied for the use of the poor.

In a question between these parties, relative to the payment of a bill that was granted to the pursuer, by the deceased Hugh Blair, in consequence of his having lost a bett of L. 200 Sterling upon this feat of horsemanship, which of them should ride in the shortest time from Dumfries to Kirkcudbright?—the pursuer having *contended*, That betts of this kind were not illegal, the point deliberated upon by the Court was, Whether or not the act 1621 was in desuetude? And, for showing that it was not, reference was made to the decision in the case of Sir Scipio Hill, 9th February 1711, *voce* POOR.

The Court "found, that the 14th act, Parliament 1621, is not in desuetude; and ordain the Clerk of this process to intimate to the Kirk-Sessions of Dumfries, Kirkcudbright, and Kelton, that they may appear for their interest in this cause; and, this intimation being made, remit to the Lord Ordinary to proceed in the cause, and to do therein as he shall see just."

Act. *Crosbie*.

Alt. *Wight*.

Clerk, *Kirkpatrick*.

Fol. Dic. v. 4. p. 34. Fac. Col. No 126. p. 338.

** See the competition between the Kirk Sessions, decided 15th June 1775, in favour of the poor of the parish of Dumfries, *voce* POOR.

No 66.

1776. December 3.

HOPE *against* TWEEDIE.

THE LORDS sustained action for a wager of a pipe of Port wine between two Gentlemen, to be paid to him who should walk first to Edinburgh from a cer-

tain place in the country ; though they assoilzied on the circumstances of the case, from which a presumption arose, that the wager was not seriously laid.—
See APPENDIX.

No 66.

Fol. Dic. v. 4. p. 34.

1787. January 26.

EDWARD BRUCE, Writer to the Signet, against WALTER ROSS, Writer to the Signet.

MR BRUCE and Mr ROSS laid a bet of L. 50, respecting the election of a Member of Parliament for the Eastern District of Fife Boroughs, the latter being the agent of one of the candidates. The former thinking he had gained the wager, demanded the money ; and, upon the latter refusing payment, brought an action against him.

The pursuer *pleaded*, A wager is a bargain neither immoral in itself, nor reprobated by any statute. Gaming with cards or dice for money is, at least, of as hurtful consequence as wagering ; but that it is not contrary to law, is evident from the act 1621, cap. 14. which, without prohibiting, imposes only certain restraints on that mode of gaming. Those restraints, however, do not affect wagers, the lawfulness of which is evinced by Sir George M'Kenzie's Observations on the same statute. This contract, therefore, is a legal ground of action ; and so, in a case 9th February 1676, No 52. p. 9505. reported by Dirleton, the Court found.

The defender stated nothing with respect to the competency of the action ; his argument being confined to the question of fact, Whether the wager was lost or won by him. But

The cause being reported by the Lord Ordinary, the Court seemed to be unanimous in the opinion, that action ought not to be sustained. The Judges, in general, regarded a wager as in no case a legal ground of action ; while some, who thought differently, were, nevertheless, disposed to deny action in this particular case, from the idea, that political operations were a peculiarly improper subject of wagering.

On this ground, therefore ; for, on the matter of fact, the opinion of the Court appeared to be in favour of the pursuer,

“ THE LORDS dismissed the action, and assoilzied the defender.”

A reclaiming petition against this judgment was refused without answers.

Reporter, Lord Ankerville.

Act. Wight.

Alt. Ipse.

Clerk, Orme.

S.

Fol. Dic. v. 4. p. 34. Fac. Col. No 301. p. 465.

No 67.

A wager respecting the election of a Member of Parliament, found not actionable. Affirmed on appeal.