

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.

No 67.

* * * This case was appealed.—The HOUSE of LORDS, 14th April 1788, “ORDERED and ADJUDGED, that the appeal be dismissed, and the interlocutors complained of be affirmed.”

No 68.

1796. July 7.

FRASER *against* SPROTT.

FRASER, a jeweller and hardware merchant, having advertised a scheme of a lottery, for disposing of his goods, the Procurator-fiscal of the City of Edinburgh applied to the Magistrates for an interdict against him, upon the ground of such lotteries being declared nuisances by law, particularly by 27th George III. cap. 1. § 2. Urged in defence, That the remedy prescribed by the statute was confined to the Courts of Westminster Hall, and that we have no common law against making sales in this manner. The Magistrates granted the interdict. On a bill of advocation being reported to the Court, the LORDS remitted to the Ordinary to pass the bill, to the effect of trying the question; and, in the mean time, continued the interdict.—See APPENDIX.

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

1799. May 15.

SAMUEL WORDSWORTH *against* JOHN PETTIGREW.

No 69.
Wagers are
not action-
able.

SAMUEL WORDSWORTH obtained decree in absence against John Pettigrew for L. 5 Sterling, as the amount of a wager, that a particular mare would trot 17 miles within an hour.

In a suspension, Pettigrew, besides denying that he had taken the bet, contended that action does not lie for claims of this sort.

The Court, upon a verbal report by Lord Probationer Bannatyne, were unanimously of this opinion. This was not founded on the statutes against gaming, but on common law. Courts of Justice (it was observed) were instituted to enforce the rights of parties arising from serious transactions, and can pay no regard *sponsionibus ludicris*; as to money gained or lost, on which *melior est conditio possidentis*; 26th January 1787, Bruce against Ross, No 67. p. 9523. affirmed on appeal.

The letters were suspended *simpliciter*.

D. D.

Fac. Col. No 123. p. 28E.