

## SECT. XI.

*Sponsiones ludicræ.*—Game Debt.—Premium for procuring a Wife.—  
Private Lotteries.

1676. February 9. A. against B.

A PURSUIT was intended for a sum of money, which the defender was obliged by his promise to pay in case he should be married; having gotten from the pursuer in the mean time a piece, which the pursuer was to loose, in case the defender should not be married.

THE LORDS sustained the pursuit; though some of their number were of the opinion, that *sponsiones ludicræ*, of the nature foresaid, ought not to be allowed.

Reporter, *Straburd.*

*Fol. Dic. v. 2. p. 24. Dirleton, No 327. p. 157.*

No 52.

1678. June 6. CAMPBELL against BARNES and STEWART.

SIR WILLIAM CAMPBELL pursues John Barnes and Stewart of Blackhall, &c. to pay him 10,000 merks, on this ground, because they had promised him the said sum, if he should effectuate marriage betwixt the defender and such women; and Sir William subsumed he had done it. This is founded on the title *D. De Proxenetis*, where the law says, *Proxenetica jure licito petuntur*. But I think the pursuer must qualify relevantly, that it was by his mediation and procurement the marriage followed; for it is not sufficient to say only, *quod matrimonium est secutum*. This process moved laughter.

*Fol. Dic. v. 4. p. 27. Fountainball, v. 1. p. 1.*

No 53.

1687. January 13. REID against SCOT of Harden and his Lady.

REID the mountebank pursues Scot of Harden and his Lady, for stealing away from him a little girl, called the tumbling-lassie, that danced upon his stage; and he claimed damages, and produced a contract, whereby he bought her from her mother for L. 30 Scots. But we have no slaves in Scotland, and mothers cannot sell their bairns; and physicians attested the employment of tumbling would kill her; and her joints were now grown stiff, and she declined

No 54.

No 54.

to return; though she was at least a prentice, and so could not run away from her master; yet some cited Moses' law, that if a servant shelter himself with thee against his master's cruelty, thou shalt surely not deliver him up. THE LORDS *renitenti Cancellario* assoilzied Harden on the 27th of January.

*Fountainhall, v. I. p. 439.*

No 55.

In a pursuit for payment of a bond, alleged for the defender, that the money was won at dice within 24 hours, and so was not due by the act 14<sup>th</sup> Parl. 23<sup>d</sup> James VI. Answered, the act affords only a defence when the money is pursued for; but here a bond of money is pursued. The Lords found it relevant *scripto* or *juramento*, that the bond was granted for money won at game within 24 hours, to make the bond fall under the act of Parliament.

In the same cause it was found, that the money lost being paid, and immediately lent back on bond, though probably the individual species lost was not lent; this also fell under the act of Parliament.

1688. July 19. CAPTAIN STRAITON against The LAIRD of CRAIGMILLER.

IN a pursuit at the instance of Captain Straiton against Craigmiller, for payment of a 6,000 merks bond,

*Alleged* for the defender; That the money was won at game, viz. dice, within 24 hours, and so was not due by the act 14<sup>th</sup> Parl. 23<sup>d</sup> James VI.

*Answered*; The said act affords only a defence against payment when the money is pursued for; but here a bond of borrowed money is pursued.

"THE LORDS found it relevant *scripto*, or *juramento*, that the bond was granted for money win at game within 24 hours, to make money fall under the act of Parliament."

Captain Straiton having deponed, that he lent the defender 4,000 merks, which was all truly borrowed money, except 36 guineas, and thereafter lent him 2,000 merks more, and upon giving back the first bond, got the 6,000 merks bond delivered to him; but refused to depone if he won back any part of the 4,000 merks before the lending of the 2,000 merks.

*Alleged* for the King's Advocate; That money won at game within 24 hours, above 100 merks, is by the act of Parliament confiscated to the poor of the parish; and the pursuer's refusing to depone *ut supra*, imports, that after the lending of 4,000 merks, he won back a part on it before lending of the other two, which is *fraudem facere legi*. And if such a thing were allowed, a gamester with 1,000 merks might win 100,000 in 24 hours, in lending it over and over again upon tickets, which would quite elude the act of Parliament, introduced for the public advantage, to refrain youth and riotous persons.

THE LORDS were clear that the 2,000 merks fell under the act of Parliament *in quantum* Captain Straiton won back of the 4,000 merks lent on bond, though the individual species lost was not lent again; and declared they would determine so in all time coming, not only as to money won at cards, dice, and horse-races expressed in the act of Parliament, but in all other games wherein money is win and lost; but, in respect the act was in desuetude, they would not determine so as to by-gones; "but found the letters orderly proceeded at the pursuer's instance against the defender, except as to 31 guineas, the other five guineas but 100 merks, allowed to be won in 24 hours."

*Fol. Dic. v. 2. p. 24. Harcarse, (SUMMONS.) No 937. p. 263.*