1698. *January* 27. *February* 24. *and June* 22.
EARL of BUCHAN *against* COCHRAN.

No 56.

THE Earl of Buchan suspended a charge upon a bond granted by him for L. 1,000 Sterling to Sir John Cochran of Ochiltree, for his assistance in procuring to the Earl an English Lady in marriage, with a fortune of L. 10,000 Sterling, on this ground, that by decree of the Lord Chancellor, the bond had been found null as *contra bonos mores*. Sir John having restricted his claim to L. 600 in name of expenses, incurred by his staying some months in London and managing Lord Buchan's affairs; the LORDS, before answer, ordained him to condescend in what manner these expenses were incurred, and whether his stay in London was on this account alone, or any other business of the Earl or his own.

Fol. Dic. v. 4. *p.* 27. *Fountainhall. Dalrymple.*

*** This case is No 82. p. 4544. *voce* FOREIGN.

1740. *January* 25. NEILSON *against* BRUCE.

No 57.

IN a suspension of the charge upon a bill at the instance of an indorsee on this ground, that the bill had been granted for money won at play, offered to be proved by witnesses, the reason of suspension was repelled, unless it were offered to be proved, that the indorsee was in the knowledge of its having been granted for a game debt.

The like was found, 18th February 1741, Stewart *contra* Hislop, where a petition against an Ordinary's interlocutor, finding it not competent, against an onerous *bona fide* indorsee, to be proved by witnesses that the bill was accepted for money won at game, was refused without answers.

Fol. Dic. v. 4. *p.* 34. *Kilkerran*, (BILLS OF EXCHANGE.) *No* 4. *p.* 70.

*** C. Home reports this case:

1740. *January* 29.—The question betwixt these parties was, Whether the objection to a bill that it was granted, or came in place of another which was granted for a game-debt, was good against an onerous indorsee?

For the indorsee it was *pleaded*, That securities do not carry their causes in their face; and a fair trader, where there are no suspicious circumstances of the debtor, supposes the causes to be just, otherwise commerce would be at an end; for what man would receive indorsations to bills, if the objection of being won at play was to stop his payment? This would render all bills suspicious, especially with such cautious people as merchants, who would not fail to argue,

No 57. that though the debtor seems to be a very good man, yet he may love play in private, and this may be a game-debt. And if this had been the intention of the act to give so notable a blow to commerce, surely it would have been expressed, that bills, though passing into the hands of persons not privy to the wrong, should not be exempted from the statutory nullity; an exception that is included in the very nature of the thing, must be carried along in the intendment of the act of Parliament. And this is the genius of the law of England, by which this statute must be in a great measure explained. The act of the 9th Anne, was not new as to the annulling of bills and other securities granted for game-debts. The same thing was before statuted by the act 16th Cha. II. chap. 7. whereby all such securities are declared to be utterly void, and of no effect; and yet it never was imagined by the Judges in that country that this was to hurt innocent parties noways partakers of the fraud, and so it was adjudged. See Neilson's Abridgment, p. 893. and Salkild, under the word GAMING, Hussie against Jacob; which precedents, as they are founded on good sense, must be law every where.

Answered for the debtor in the bill; That by the words of the act, 'All 'notes, bills, &c. where the whole, or any part of the consideration of such 'conveyances or securities, shall be for any money, &c. won by playing at 'cards, dice, &c. shall be utterly void, frustrate, and of none effect, to all in-'tents and purposes whatsoever, any statute, law, or usage to the contrary 'thereof, in any ways, notwithstanding:' The generality of which words utterly excludes any limitation or restriction to be put upon them; the prohibition extends not only to the securities themselves, amongst which bills are specially mentioned, but also to the conveyances of such securities. And it is anxiously provided, that they shall be utterly void, &c. to all intents whatsomever, with a *non obstante* to any statute, law, or usage to the contrary. The act proceeds upon the recital, that the former laws were, by experience, found insufficient to restrain the mischief intended to be cured; and therefore goes on, not only to provide new remedies, but also to enforce those which had been formerly enacted by a more particular accuracy of expression. It is therefore in vain to plead the onerosity of the indorsation; if the security itself is originally for a play-debt, the law has made it void, and of none effect; all conveyances of it are in the same manner condemned; and if the indorsation of it to a stranger shall make it revive, the words of the law must be useless, and without a meaning; and, if this is so, arguments from inconvenience, whether real or imaginary, can have little effect; they cannot be supposed to have escaped the wisdom of the Legislature; and the law enacted must be looked upon to be the result of mature deliberation, after balancing the inconveniencies on both sides. The mischiefs arising from gaming are obvious; and it could not but occur, that contrivances would be attempted to disappoint the law; these negociations are generally carried on in a hidden way; and where securities are to be given, it was natural to imagine that the names of third

parties might be made use of to cover the deceit. It is indeed possible that minors and onerous creditors may sometimes be unwarily imposed upon to accept such securities, not suspecting that they were originally the product of game; but this hazard was not thought of weight enough to be laid in the balance with the imminent danger which must arise from false and fictitious covers which might be made use of in play-debts. It is a maxim in law, That every one ought to know the condition of the person with whom he contracts; which must apply in the present case, at least, with equal force, where the exception against the original debt is established by a statute, which occurs in other instances where the onerosity on the part of the creditor would not be available, supposing the bill laboured under the exception of falsehood or force; and yet these would as little appear from the face of the bill as this; nor can the reason be other than this, that the bill being null *ab initio*, is thereby incapable of conveyance. See the law 2. § 1. et l. 4. § 2. De Aleatoribus. And as to the precedents quoted for the indorsee, they are prior to the statute in question, and so cannot be obtruded to limit or restrain it; they are laid upon the act of Charles II. by which the provision is not so full and ample as in the present. Besides, they are instances which prove the artifices contrived to defeat the law, which makes it reasonable to presume they have given occasion to the enlargements made by the posterior act. No 57.

THE LORDS repelled the reason of suspension founded on the game-act, in respect the bill in question was purchased by the charger for onerous causes; and that there is no evidence offered of his being in the knowledge that the bill was granted for a game-debt.

C. Home, No 142. *p.* 242.

1740. *November* 7. Sir ROBERT PRINGLE *against* ROBERT BIGGAR.

No 58.
In a reduction of a bill on the act of the 9th of Queen Anne, it is competent to prove by the winner or his trustee, that the fame was granted for money lost at game, even against onerous assignees.

SIR ROBERT being creditor to Mr John Alves, used arrestment in the hands of Mr Biggar, who was debtor to Mr Alves in several bills, which were taken in the name of Mr Gilbert Pringle, as trustee for Mr Alves; and, in a forthcoming raised thereon by Sir Robert, Mr Biggar repeated a reduction of the bills upon the act 9th Anne, cap. 14. and offered to prove by Messrs Alves and Pringle's oaths, that the bills were granted for money won at game.

Answered for Sir Robert; That it was a maxim in law, that the oath of the cedent was not competent in prejudice of an onerous assignee, whether legal or voluntary, and as the statute had introduced no alteration from the common rules of law in this particular, they behoved to apply to the present case. The statute annuls bills, bonds, &c. granted for money won at play. It likewise enacts, That where a party loses at game and pays, he shall have action of repetition within three months, and that the party woning money at game, shall be obliged to answer upon oath, with respect thereto; but it no where says that such oath shall be probative against third parties, the onerous creditors of