

No. 18. 1745, July 24. SIR GEORGE M'KENZIE *against* ROBERT HAMILTON.

THE Lords found the objections against a bill founded on the game act, not competent against an onerous indorsee, to be proven by the indorser's oath, as we did formerly, 25th January 1740, Nelson against Bruce of Newgrange. 2dly, That the clause in the act anent the L.10, concerned only the case of ready money lost and paid at the gaming; but that a bill or other security for the smallest sum lost at game is void and null.

No. 19. 1747, July 17. RAMSAY *against* ADDERTON.

KILKERRAN had found, that the Custom-house officers may sue before Justices of Peace for condemnation of brandy, that yet the person from whom seized cannot sue the Custom-house officers before the Justices of Peace on the act 6th Annæ; and we Adhered.

No. 20. 1751, June 14, July 16. THE TREASURER OF HERRIOT'S HOSPITAL *against* GARDENER OF HERRIOT'S GARDEN.

DAVID WADDEL, who having a tack of 19 years of Herriot's Work Gardens, with a limitation that he prevent the use of all such diversions as kites, bowl and ring, and pennystone, &c. and shall not pasture horses or cows in the walks of the said garden, contracted with Mr Lampe, musician, to give him the use of the inner garden for musical entertainments during the summer season, for which purpose a theatre for the music was erected in the middle of the garden, and advertisements at 1s. the person issued, after the example of Raneleigh and Vauxhall gardens; upon which the Treasurer of the Hospital and Procurator-Fiscal complained to the Magistrates, who found it to be highly prejudicial to the inhabitants of the city, contrary to the meaning of the act, and detrimental to the Hospital;—of which sentence a bill of suspension was exhibited to us; and the gardener alleged, that by his lease he was only obliged to debar those diversions that withdrew from their employments the meanest sort of people, whereas musical entertainments were for higher rank; that such diversions had been authorized, at least connived at in the gardens, and guard-soldiers placed to keep off the mob even before his lease; that the diversion was innocent and lawful, and encouraged by the best people in the south part of the island, and cannot be restricted without a statute; that entertainments of the same kind are allowed in houses in this town, and are equally lawful in open air; and there can be no prejudice to the Hospital, whose boys can have no access there. In the answers, this was said to be prejudicial to the gardens, to spoil the walks, &c.; that it was hurtful to the boys, but especially as the hour was six at night, the hour for prayers in the Hospital. But the chief objection, as it appeared to me, was, that it had an evident tendency to debauch the young people in this town, to bring about clandestine, imprudent, unreasonable marriages, and even worse. Upon the question, it carried to refuse the bill; wherein I did not vote, because I had never seen any of these entertainments, and knew not whether they tended to promote debauchery and lewdness or not. *Pro* were, besides the President, Drummore, Strichen, Justice-Clerk, Woodhall,