

1787. January 26. EDWARD BRUCE *against* WALTER ROSS.

PACTUM ILLICITUM.

A wager respecting the election of a Member of Parliament not actionable.

[*Faculty Collection, IX. 465 ; Dictionary, 9,523.*]

HAILES. There is more in this wager than appears at first view of it. It might comprehend a wager as to the terms of an interlocutor of this Court, of a judgment of the House of Lords, and of a report of a committee of the House of Commons. A wager, on the like principles, might have comprehended the *number* of the judges who should give opinions in favour of Colonel Moncrieff: and it might have gone farther, by specifying the *names* of the judges who should happen to vote on either side of the question. In all this there seems to be much impropriety; and therefore one must wish that there were some law or practice to put an end to such wagers. It is said, here is *sponsio ludicra*, which is not reprobated by law. It has been found that a *sponsio ludicra* as to a man's marrying or not marrying, is good. But determinations of courts of justice are not sporting matters: *that* is a sort of stipulation of which I cannot approve.

SWINTON. We have an authority of the civil law on this point. By that law wagers were allowed *ubi certamen est de virtute ; L. 5, de Aleatoribus*. I am afraid that *here* there is no such *certamen*. We ought then to resort to the rules of the civil law.

MONBODDO. Were that not our common law, it would still be a good law: political gaming is very dangerous gaming, and, were it permitted, people might be tempted to use undue means in order to win their wagers.

PRESIDENT. If Messrs Bruce and Ross had been called to answer questions in the House of Commons, could they have answered? No: because they were parties interested. On account of their refusal to answer they would have been sent to Newgate.

ESK GROVE. I was surprised to see so very little said in the informations on a point of such importance. The case of *Sir William Maxwell against Pringle*, was a wager on the fact of being married: this was unfair and *hollow*, in my opinion, as depending on a man's own will. [His Lordship seems to think that a man may always marry the woman whom he likes, or will marry the woman whom he does not like, rather than lose a wager.] The Court sustained such wager; but I should have hesitated on the point. Were we to give a like judgment in this case, the consequences would be dreadful: great sums of money would be laid on the event of judicial proceedings, and then attempts might be made to procure secondary interests for making the wager successful.

On the 26th January 1787, "The Lords found that action does not lie, and dismissed it accordingly."

Act. A. Wight. Alt. W. Ross, in propria persona.
Reporter, Ankerville. Unanimous.