

No 58.

the winners of such money; See Neilson's Abridgment, p. 893. Verb. GAMING. Cornelius Neilson against Bruce. No 56. p. 9507.

*Replied;* That the nullity in the security granted for money won at game was general, affecting all persons whatsoever, who had or might come to have interest therein, and was indeed a *vitium reale* in such securities, introduced by statute, with a *non obstante* as to all laws and customs in the contrary thereto. As to the mean of proof, by the oath of the winner at game, the words of the third clause of the act, declaring it competent, are general, as well as the nullity itself; and by the said clause, though the winner or original creditor in the bills were not a party to the suit, they might be compelled to answer upon oath, whether or not the sum in question was won at game, which must hold stronger in this case, where the winner at game, and his trustee, are the only parties called, or that properly fell to be called in this process of reduction. If it were true, that no more was necessary for avoiding the effect of the said clause, than for a gamester when he is sued upon the act, to get a creditor of his to arrest in the pursuer's hands, and plead, that the gamester, or his trustee's oath could not be taken, it is obvious, according to that explanation, the clause could be of no effect, seeing such a remedy could never be wanting; See July 1735, Gillon, February 1731, Pringle, (See APPENDIX.)

*Duplied,* The rules of law are not to be altered upon imaginary inconveniences, without statute; and as it is directed only against the winner, without speaking of onerous assignees, they are entitled to the common benefit of law; but there is really no inconvenience in the case, for if the loser be minded to take the advantage of the statute against the winner, he has no more to do but bring his action in terms thereof; and when the matter is rendered litigious, he will have the benefit of the winner's oath in prejudice of any onerous assignee, and if he is not disposed to take that benefit against the winner, but would take the advantage against an onerous assignee, there is no good reason why he should have right to such an option; for even after he has paid to the onerous assignee, still he has action against the winner.

THE LORDS found, That the reason of reduction, that the bills in question were granted for money lost at play, was probable by the oath of Gilbert Pringle and John Alves, or either of them.

*Fol. Dic. v. 4. p. 33. C. Home, No 156. p. 265.*

1741. February 18.

STEWART against HYSLOP.

No 59.

IN the question betwixt these parties, the LORDS found, That it was not competent to prove by witnesses, that the bill charged on was accepted for money lost at game, against an indorsee for an onerous cause, who was not privy to the wrong. See No 56. p. 9507.

*Fol. Dic. v. p. 4. 34. C. Home, No 162. p. 275.*