that footing, or upon the circumstances of the parties, that the judgment was founded in Abercrombie's case, but entirely upon the natural turpitude of such bargains, and upon the danger of admitting them in any shape. Insurances, bills of bottomry, annuities on lives, purchases of liferent, tailzies, and other settlements, are introduced in favour of commerce, or for the convenience of mankind, by regulating successions. But no argument of convenience or expediency can be brought to support wagers of this kind, which generally import a *turpe votum* upon one side, a desire to take an undue advantage upon the other, and, at best, folly and rashness upon both. No 61.

" THE LORDS found the bond in question void and null, reserving to the consideration of the Court, whether the pursuer should have repaid to him the money paid for the same, upon proving the extent thereof.'

Act. *H. Home, W. Stewart.* Alt. *Ferguson.* Reporter, *Lord Elchies.* Clerk, *Kirkpatrick.*
S. *Fac. Col. No* 61. *p.* 93.

1760. *August* 8.

SIR WILLIAM MAXWELL of Monrieth *against* MR CHARLES MURRAY.

No 62.
A minor bought rings worth L.40, promising to pay 150 guineas for them at his marriage or death. This obligation he ratified when major. Found valid.

SIR WILLIAM MAXWELL of Monrieth, in his minority, granted bond to Charles Murray of Stanhope, acknowledging the receipt ' of a large diamond ring, with ' a fine picture ring, in value upwards of L. 40 Sterling, and obliging himself to ' pay to the said Charles Murray for these rings, 150 guineas at the first term ' after his marriage or death,' which of these terms should first happen, with the ' interest after the term of payment;' and, three years after he became major he granted a formal ratification of the same.

Sir William, in the year 1760, brought a reduction of this bond, upon the following grounds; 1*mo*, That it was a *sponsio ludicræ*, and in effect a game-debt; 2*do*, That the bargain was usurious, an exorbitant advantage being taken of him under colour of the uncertainty of the terms of payment; and therefore, that it ought not in equity to be sustained for more than the value as estimated by the parties, viz. L. 40 and interest. *Answered* to the *first*, That this is obviously a commercial bargain, and by no means a *sponsio ludicræ*. Here is a *merx et pretium* both ascertained. The quantity of the price is indeed made to depend upon future events, but no lawyer says that this is an objection to any bargain. Even bargains of pure chance are indulged in commercial dealings, witness a *jactus retis* mentioned by all the Roman lawyers. Upon that foundation stand policies of insurance, bottomry contracts, the *pecunia trajectitia*, and a thousand others which daily occur in commerce. To the *second* it was *answered*, That this case must be distinguished from extortion, where a young heir, or any man pinched for want of money, must have it at any rate, and where the lender, taking advantage of the borrower's necessity, imposes upon him hard and rigorous conditions. This is not the present case. Sir William was under

No 62. no necessity to have the rings, nor was he in circumstances to put it in any man's power to oppress him with rigorous conditions. The terms of the bargain were altogether voluntary on his part; and, supposing them unequal, that circumstance is not relevant to void a lawful bargain. But they were not unequal. Sir William is possessed of an entailed estate, and his creditors cannot draw a shilling but what they make effectual during his life. The defender, in particular, could have no hopes of his payment but by Sir William's marriage, which is one of the terms of payment of the bond. And even though Sir William is married, yet, if he die soon, the defender has little hopes of his money. He does not expect to recover even the L. 40, to which the rings were estimated.

"The reasons of reduction were repelled, and the defender was assoilzied."

Sel. Dec. No 168. *p.* 129.

1767. *March* 5.

JOHN M'COULL, Shoemaker in Edinburgh, *against* ALEXANDER BRAIDWOOD, Shoemaker there.

No 63.
A bill for L.8, a part of which sum had been won at play, was found null.

M'COULL having charged Braidwood for payment of a bill of L. 8 Sterling, Braidwood suspended on this ground, That the bill was granted for money won at play, and therefore null by the said statute. M'Coull, in a condescendence, averred, that the greatest part of it was for furnishings of different kinds, but acknowledged, that having kept a sort of public house, between 30s. and 40s. of it was for liquor, won by him at draughts from the suspender, during the course of 18 months, and at many sittings.

THE LORD GARDENSTONE Ordinary, upon advising this condescendence, "sustained the reason of suspension, founded on the act of Queen Anne, That the bill charged on was in part granted for a game-debt; found the said bill void, and suspended the letters *simpliciter*, without prejudice of any action at the charger's instance, for payment of any furnishings, or advances by him, separate from the game-debt, as accords."

The suspender reclaimed, and *contended*, That the act was not meant to restrain from play for amusement, and for trifles. It is entitled, 'An act against 'excessive and deceitful gaming.' What is excessive gaming, is no where expressly said in the act, but may be collected from that clause which allows recovering of any sum above L. 10 lost at one sitting. This seems a key to the spirit of the whole statute, and particularly to warrant a correspondent limitation of the general clause, respecting securities, founded on by the suspender.

2*do*, It is submitted, whether the present case does at all fall under the act. In the common case there is no value given for money lost at play. But here the suspender got liquor, and as the charger lost fully as much as he, the sum charged for was really no more than the suspender's club, which he ought at any rate to pay.