further than equity carries it, and equity could never refuse some consideration for the chance of the absolute loss of the money. No. 35.

But as all agreed that the practice of England was to be the rule in this case, and that the defender was no otherwise entitled to his relief than upon payment, the Lords, on the 12th July, 1745, "repelled the objection of usury, and unanimously found that the bond in question should only subsist for the principal sum and interest, and that upon payment thereof against the term of Whitsunday next, the same should be discharged; but in case payment were not then made, they decerned for the whole sum in the bond, the same being redeemable at any time by the defender upon payment of the principal sum and interest, and expenses hereafter incurred by the pursuer."

Kilkerran, No. 4. p. 364.

*** D. Falconer's report of this case is No. 23. p. 4894. *voce* FRAUD.

1753. *February* 7. SIR MICHAEL STEWART *against* EARL of DUNDONALD.

No. 36.

William Cochrane, at a time when his elder brother, having two sons, was alive, who were all preferable in succession to the estate and honours of Dundonald, granted a bond to John Stewart, proceeding on a narrative of a certain sum advanced, and obliging himself to pay 100 guineas as soon as he or his heirs should succeed to the estate and dignities of Dundonald. The condition having been purified in the year 1725, and a process brought on the bond in the year 1745; the Lords found the bond void and null, reserving to the consideration of the Court, whether the money which had been advanced ought to be repaid, on proof of the amount.

Fac. Coll. Sel. Dec.

*** This case is No. 61. p. 9514. *voce* PACTUM ILLICITUM.

1760. *July* 9. SIR WILLIAM MAXWELL *against* JOHN PRINGLE.

No. 37.
A minor gets two rings worth about 40l. and grants bond for 150 guineas, payable at the first

Sir William Maxwell, when not quite major, purchased from Mr. Charles Murray two rings; for which he granted an obligation of the following tenor: He sets forth, That Mr. Murray had instantly sold and delivered to him two rings, in value upwards of £.40 Sterling; for which he binds himself, and his heirs, to pay to him 150 guineas at the first term after his marriage or death, with penalty and annual-rent after that term; and he farther binds himself to renew the bond after his majority, when required.

No. 37. term after his marriage or death, and renews the bond after majority. The bond found good.

Sir William being major, grants a new bond to Murray, by which he acknowledges, that he is justly addebted, resting, and owing, to him, £.157 10*s.* which he obliges himself to pay at the terms and on the conditions mentioned in the first bond.

Sir William insisted in a reduction of the bond, against Mr. Pringle, trustee for Mr Murray's creditors.

Pleaded for the pursuer: This bond proceeds on a false narrative, as it sets forth, that Sir William owed Mr. Murray 150 guineas, whereas only £.40 was advanced. The bond is usurious, as the sum it contains is double what could ever be due, according to any calculation of the pursuer's death or marriage. The Court has so decided in two late cases similar to the present, but much more favourable to the creditors; Dr. Abercrombie against Earl of Peterborough, in 1745, No. 35, *supra;* Sir Michael Stewart against Earl of Dundonald, in 1753, No. 36, *supra.* In both these cases, the contracts were truly bargains of hazard, in which the creditors run a great chance of losing their money. In the present case, there was no hazard; the bond was undoubtedly due, and only payment delayed till death or marriage; and the consideration to be paid by the debtor for that forbearance greatly exceeded the highest computation of legal interest that could possibly be due at any of these periods.

Answered for the defender: This was not a loan of a certain sum of money, for a consideration above the legal interest. It was a chance bargain. The parties agreed, that the rings were worth above £.40; but how much, is uncertain. Mr. Murray had a *pretium affectionis* for his rings. Sir William's death or marriage were uncertain as to the time, and he might have died bankrupt. Such chance bargains are not *contra bonos mores*, not reprobated by the law of Scotland. The present case differs from that of the Earl of Peterborough, in three material articles; 1*mo*, This is not a loan of money, but a bargain about rings, the value of which was not fixed; 2*do*, In the present case, Sir William, three years after, when major, *sciens et prudens*, and when he must have known the just value of the rings, renewed the bond; which is passing from all objections; 3*tio*, Sir William has disposed of the rings, and so cannot reinstate Mr. Murray in his former condition, which is necessary in all such cases.

Replied for the pursuer: It was not a chance bargain; for the value of the rings was fixed to £.40, and is not yet pretended to be greater. The new bond is admitted to have come in place of the old one; so is liable to the same objections. The rings were clearly sold for £.40; and this action is not brought to reduce the sale of the rings *in toto*, but only to correct the inequality.

"The Lords repelled the reasons of reduction, and assoilzied."

Act. *Miller.* Alt. *Lockhart.* Clerk, *Kirkpatrick.*

P. M. *Fac. Coll. No.* 228, *p.* 420.