

No. 2. " Found the defender bound to remove from the possession at Whitsunday  
" next, and decerns."

On advising a reclaiming petition, with answers, the Court were unanimous, that the contract was usurious; and, with the exception of one Judge, they were also of opinion, that it was struck at by the statute 7th Geo. II. All were agreed, that a penalty attached to an illegal contract could not be sustained.

The Court " adhered."

Lord Ordinary, *Stonefield.* Act. Lord Advocate *Hope, W. Scott.* Alt. *Monypenny, Tod.*

R. D.

*Fac. Coll. No. 193. p. 443.*

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1804. November 16. CUMMING GORDON *against* CAMPBELL.

No. 3.  
A wager is  
not action-  
able.

ON the 29th May 1797, a contract was entered into between Major-General Alexander Campbell of Glendaruel, and Lieutenant-Colonel Alexander Penrose Cumming Gordon of Altyre and Gordonstown, " That in case at  
" any time, in the course of ten years from and after the date hereof, the  
" value of L. 100 Sterling in that part of the British funds called the 3 *per*  
" *cent.* consols, should rise, so as to be rated in the Stock Exchange, Lon-  
" don, at above L. 70 Sterling, then, and in that event, the said Alexander  
" Campbell shall be bound, as he hereby binds and obliges himself, his  
" heirs, executors and successors whomsoever, jointly and severally, to pay  
" to the said Alexander Penrose Cumming Gordon, his heirs, executors or  
" successors, the sum of L. 100 Sterling, with the lawful interest thereof,  
" from and after the time the same shall fall due by the said event, ay and  
" until payment." And, on the other hand, Colonel Cumming bound him-  
self to pay the like sum, if the 3 *per cents.* did not rise to L. 70.

This contract was formally executed on stamped paper, and recorded in the books of Council and Session.

General Campbell died in July 1801, and was succeeded by his brother Duncan. Within the time specified, the 3 *per cents.* rose above L. 70; and an action having been brought for fulfilment of the contract, the Lord Ordinary at first assoilzied the defender, finding the contract not actionable in this Court; but afterward ordered informations.

The pursuer

Pleaded: Although an agreement at play might not be actionable in this country, still the present case is widely different. There was here no game:

it was a single wager, upon an event not created for the purpose of amusements and upon an event of the greatest importance. It has not one feature of a *sponsio ludicra*. It has nothing ridiculous in it; nothing unbecoming the dignity of the Court to examine. It is a simple and solemn contract, which creates a complete obligation in natural justice. Why, therefore, should it not be enforced in a court of justice? If such transactions be inexpedient, the Legislature alone can have the power to declare them void, as they did in certain cases, by 7th Anne, c. 15., and 19th Geo. II. c. 37. That wagers on a contingent event, or uncertain fact, are actionable, is expressly recognized by our law; Bankt. B. 1. Tit. 19. § 46., 9th February 1676, A. and B. No. 52. p. 9505.; Hope against Tweedie, 3d December 1776, No. 66. p. 9522. : as well as by the English Courts; *Da Costa v. Jones*, 31st January 1778, Cowper's Reports, p. 729. : *Good v. Elliot*, 3 Term. Rep. p. 693.

Answered : Though the attention of the Legislature has been confined to cases of gambling or horse-racing, common law has interfered in all cases of wagers, which, in fact, are nothing but gambling contracts, denying action on all cases which come under the description of a *sponsio ludicra*. Such rights are not founded on any consideration; they must be left entirely to the law of honour, as Courts ought only to enforce rights arising from serious and solemn grounds; Sir Michael Stewart against Earl of Dundonald, 7th February 1753, No. 61. p. 9514; Bruce against Ross, 26th January 1787, No. 67. p. 9523.; Wordsworth against Pettigrew, 15th May 1799, No. 69. p. 9524; Mackenzie's Obs. on 1621., c. 14.

The Court, (16th November 1804) were unanimous in dismissing the action.

Lord Ordinary, *Bannatyne*. Ad. *Mackenzie*. Agent, *Alex. Grant*, W. S.  
 Alt. *Monypenny*. Agent, *Jo. Campbell*, 4tus, W. S. Clerk, *Walker*.

F.

*Fac. Coll. No. 181. p. 406.*

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