

P O O R.

1711. February 9.

Sir ANDREW RAMSAY *against* JAMES GRANT, Kirk-Treasurer.

THE deceased Sir Andrew Ramsay of Abbotshall having granted two heritable bonds to Sir Scipio Hill, containing the sum of 28,000 merks; and he being infest thereon, pursues a pointing of the ground; wherein comparance is made for James Grant, kirk-treasurer to the town of Edinburgh, who repeats a declarator founded on the 14th act 1621, statuting, That all money lost at cards, dice, horse-races, and other games, above 100 merks Scots, shall belong to the poor; and offered to prove the sums in these bonds were play-money; and that about the date of these bonds in January 1707, Sir Andrew Ramsay gamed with the said Sir Scipio, and lost the equivalent sum, which must be presumed to be the cause of this bond, unless Sir Scipio instruct another onerous cause. *Alleged*, No process at the kirk-treasurer's instance, but only at the instance of the Magistrates and their Fiscal, as the act directs. *2do*, Mr Andrew Ramsay, now of Abbotshall, has transacted with him for a small thing to lend his name, and therefore his interest should be repelled. *Answered*, The kirk-treasurer's claim is sufficiently founded in law, for the poor's behoof, and no transaction made by him can wrong them. THE LORDS sustained the kirk-treasurer's title. Then it was *alleged*, That his bonds bearing borrowed money, can never be taken from him, but *scripto vel juramento*; otherwise, this objection may be obtruded against every bond, that its true cause was play-money; and to admit this to be probable by witnesses, may subvert the solidest rights in the nation, and so cannot be dissolved *nisi eodem modo quo colligatum est*; which is an excellent caution laid down by the law of Scotland, that writ shall not be taken away by the lubrick, corrupt, and uncertain testimonies of witnesses; for, though the delivery of money be an act as perceptibly falling under our senses as gaming is, yet none ever pleaded,

No 1.

The kirk-treasurer, for behoof of the poor, is entitled to sue for recovery of money lost in gaming.

No 1.

that payment of a bond be proved by witnesses: And, though in some extraordinary cases have been examined, yet if this, by some weak resemblances, be stretched to other cases, the rule comes insensibly to be lost and dwindled into nothing. *Answered*, Though *regulariter* witnesses are not admitted against writ, yet our law has introduced some necessary exceptions; as in the case of fraud, force, fear, trust, and the like; and was lately done betwixt Malcom of Grange and Wemyss of Pitkenney; and betwixt Sir J. Houston and Kilmaronock; and formerly betwixt the Duke of Hamilton and Cunningham of Auchinharvy; (See General List of Names). And gaming may very well come under the head of fraud, it being managed with much cheatry and deceit. Yea, such was the aversion the very heathen lawyers and emperors had to it, that in the title *de aleatoribus*, they fined the very landlord in whose house they gamed, and gave him no reparation for injuries done to him; and it was no wonder they proceeded so strictly, seeing it is so destructive to human society, impoverishing young heirs in a few days time, and enriching others from the dust; and our act is borrowed from an edict of Lewis XIII. of France, where probation by witnesses in such cases of *turpe lucrum* is admitted. THE LORDS, before answer, allowed a probation that Sir Andrew Ramsay lost the like sum at game with Sir Scipio Hill, about the time of these bonds, and for Sir Scipio to prove any other onerous cause for astructing the verity of his debts. It was *urged*, that it ought to be by the instrumentary witnesses to the bond; but the LORDS thought any that were present, and saw them gaming, might be adduced, and were as competent necessary witnesses as the other; and which the LORDS had formerly done some years ago, in a pursuit by Captain Straiton against Sir Alexander Gilmour of Craigmillar, about money lost by him at cards and dice. See PROOF.—PAG-TUM ILLICITUM.

Fountainhall, v. 2. p. 635.

1737. June 29.

KIRK-SESSION of Inveresk *against* KIRK-SESSION of Tranent.

No 2:

Action at the instance of one kirk-session against another, for maintaining a child.

MARGARET LISLE, who resided many years in the parish of Tranent, married a soldier occasionally quartered there, to whom she bore a child; and thereafter, having gone from thence in her way to Ireland with her husband, she left, or exposed the child in the parish of Inveresk; which having been found and taken care of by that kirk-session, a process was brought, at their instance, against the kirk-session of Tranent, before the Commissaries of Edinburgh, in order to have the defenders decerned to take that burden off their hand:—Which being advocated, the pursuers chiefly insisted on an argument drawn by inference from the 16th act 1663, concerning beggars and vagabonds, whereby the legislature considered the place of birth as making an indelible relation to a parish; and, to the same purpose, were quoted the acts 22d, James V.