

1743. *July 12.* COULL *against* CRAMMOND.

No. 14.

THREE persons playing in a tavern at high-junks, after their play one of them called another to a room and borrowed L.4. 11s., and gave his bill, which money, after returning to the company he lost to the third person at hazard, and afterwards borrowed L.20 and gave bond for the whole, including the L.4. 11s. The whole reduced on the Game Act.

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1745. *July 16.* MAGNUS BAIN *against* THOMAS ANDERSON.

No. 15.

THE like judgment was given as in No. 11, when we found that rum and brandy being bought and received, the seller has good action for the price.

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1745. *February 8.* LORD LOVAT *against* FRAZER of Strowie.

No. 16.

A BOND for 4000 merks on the narrative of resting owing by a person then forfeited to a person of his clan also then forfeited, in 1702 when they were both in the hills, payable only in 1708, with annual rent from the term of payment, containing this condition, "and these presents to stand in force, upon condition the said Hugh Frazer stand faithful to our interest, and no otherwise," the Lords found the evidence sufficient to presume that the bond was granted *ob turpem causam*, unless the defender (pursuer) astruct the onerous cause, 20th February 1734. And the same judgment renewed after a proof allowed before answer to astruct the onerous cause, 29th November 1744. But thereafter the pursuer having produced the Chancery records, containing a remission to Lovat, Strowie, and others in 1700, whereby they were no rebels to the Government, but lawful men at the date of this bond, the interlocutor was altered, and the defence repelled, 25th January 1745.—Adhered, 8th February. (See Dict. No. 92. p. 9557.)

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1745. *July 12.* EARL PETERBORROW *against* ABERCROMBIE.

No. 17.

IN 1730 Dr Abercrombie lent Lord Peterborrow, then Lord Mordaunt, L.210, and took an English double bond for L.1600, the condition whereof

was, that if Lord Mordaunt should die before his grandfather Earl Peterborrow, (who was then about 75 years,) or if in two months after Earl Peterborrow's death, he should pay him L.840, then the bond should be null. This bond was quarrelled as usurious; *2dly*, as fraudulent and *contra bonos mores*. After having sundry precedents in the Court of Chancery laid before us, we found it not usurious, but found it redeemable any time before Whitsunday next, on payment of the L.210 lent, and interest from the time of lending, without costs; but if not then paid, then redeemable still by payment of the said L.210 and interest, but with the costs to be hereafter incurred. (See Dict. No. 35. p. 16429.)

No. 17.

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1745. July 24. SIR GEORGE M'KENZIE *against* ROBERT HAMILTON.

No. 18.

FOUND the indorser's oath not competent against an onerous indorsee, to prove that it was for money lost at game. We found that the clause in the Game Act concerning L.10 meant only ready money lost at game, but not bills or other securities.

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1747. July 17. RAMSAY *against* ADDERTON.

No. 19.

SEIZERS of uncustomed goods may on the act 6th Annæ sue before Justices of Peace for condemnation, but cannot themselves be sued before them for restitution.

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1751. July 16.

The TREASURER of HERRIOT'S HOSPITAL *against* The GARDENER of HERRIOT'S GARDEN.

No. 20.

THE gardener of Herriot's garden contracted with Mr Lampe to allow him to have musical instruments in the innermost garden during the summer season at 6. at night. The Treasurer complained to the Magistrates, who found it highly prejudicial to the inhabitants of the city, contrary to the meaning of the sett of the gardener, and detrimental to the hospital, and therefore discharged it. The gardener presented a bill of suspension, which we refused 14th June 1751. So far as appeared to me, our chief ground was, that it tended to debauch the young people, would be the occasion of clandestine and unreasonable marriages, and even worse, wherein