

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.

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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 condescence, 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 condescence, "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,

2do, 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.

3tio, The bill ought at least to be sustained to the amount of the advances and furnishings made by the charger.

Answered to the first; The statute only allows recovery where the sum amounts to L. 10, yet it has declared all securities void, whatever sum they may be granted for; and there are very solid grounds for the distinction.

The law allows to play for any sum under L. 10. provided it be paid in ready money, presuming that those who are possessed of so much cash cannot suffer by losing that sum. But, if securities were allowed for any sum at all, they might be multiplied without end, which would be very dangerous, especially to the lower class of people.

To the *second*; The statute voids all securities, granted either for money, or other valuable thing won by gaming; nor is there any real difference whether this bill was granted for money lost at play, or the price of liquor lost at play.

To the *third*; The statute declares the security null, where either the whole, or any part of the consideration of such securities, is for money won at play, and sufficient justice is done the suspender, by the reservation in the Lord Ordinary's interlocutor.

"THE LORDS adhered."

For the Charger, *Wight*.

For the Suspender, *Armstrong*.

A. R.

Fol. Dic. v. 4. p. 34. Fac. Col. No 61. p. 105.

1770. February 14.

JEAN THOMSON, Spouse to George Dallas, Writer in Edinburgh, *against* HEW MACKAILE, Writer in Edinburgh.

HEW and WALTER MACKAILE, father and son, on the 16th March 1769, granted an obligation addressed to George Dallas, which, after a long preamble, assuming the intention, which was to provide a suitable wife for the son, concludes thus: 'I hereby promise to pay to you, or order, at your house in Edinburgh, three days after date, for behoof of Mrs Dallas, your spouse, 21s. Sterling money, for the trouble and time she hath hitherto bestowed in our business with- in mentioned; as also L. 9: 9s. money foresaid, three days after the date of the contract of marriage that shall, by the providence of God, be voluntarily entered into and signed and delivered betwixt our son and a young gentlewoman, described as within.

(Signed) HEW MACKAILE.

WALTER MACKAILE."

By the assiduity and management of Dallas and his wife, a marriage was accordingly brought about betwixt Walter Mackaile and a young woman, not unsuitable in rank, but who had no fortune, and without the consent and approbation of her own parents. The pursuer then brought an action upon the obligation before the Magistrates of Edinburgh, who at first refused to sustain it;

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No 64.

A marriage-brokage obligation *contra bonos mores*, and not actionable.