

No 54.

to return; though she was at least a prentice, and so could not run away from her master; yet some cited Moses' law, that if a servant shelter himself with thee against his master's cruelty, thou shalt surely not deliver him up. THE LORDS *renitenti Cancellario* assoilzied Harden on the 27th of January.

*Fountainhall, v. I. p. 439.*

No 55.

In a pursuit for payment of a bond, alleged for the defender, that the money was won at dice within 24 hours, and so was not due by the act 14<sup>th</sup> Parl. 23<sup>d</sup> James VI. Answered, the act affords only a defence when the money is pursued for; but here a bond of money is pursued. The Lords found it relevant *scripto* or *juramento*, that the bond was granted for money won at game within 24 hours, to make the bond fall under the act of Parliament.

In the same cause it was found, that the money lost being paid, and immediately lent back on bond, though probably the individual species lost was not lent; this also fell under the act of Parliament.

1688. July 19. CAPTAIN STRAITON *against* The LAIRD OF CRAIGMILLER.

IN a pursuit at the instance of Captain Straiton against Craigmiller, for payment of a 6,000 merks bond,

*Alleged* for the defender; That the money was won at game, viz. dice, within 24 hours, and so was not due by the act 14<sup>th</sup> Parl. 23<sup>d</sup> James VI.

*Answered*; The said act affords only a defence against payment when the money is pursued for; but here a bond of borrowed money is pursued.

"THE LORDS found it relevant *scripto*, or *juramento*, that the bond was granted for money win at game within 24 hours, to make money fall under the act of Parliament."

Captain Straiton having deponed, that he lent the defender 4,000 merks, which was all truly borrowed money, except 36 guineas, and thereafter lent him 2,000 merks more, and upon giving back the first bond, got the 6,000 merks bond delivered to him; but refused to depone if he won back any part of the 4,000 merks before the lending of the 2,000 merks.

*Alleged* for the King's Advocate; That money won at game within 24 hours, above 100 merks, is by the act of Parliament confiscated to the poor of the parish; and the pursuer's refusing to depone *ut supra*, imports, that after the lending of 4,000 merks, he won back a part on it before lending of the other two, which is *fraudem facere legi*. And if such a thing were allowed, a gamester with 1,000 merks might win 100,000 in 24 hours, in lending it over and over again upon tickets, which would quite elude the act of Parliament, introduced for the public advantage, to refrain youth and riotous persons.

THE LORDS were clear that the 2,000 merks fell under the act of Parliament *in quantum* Captain Straiton won back of the 4,000 merks lent on bond, though the individual species lost was not lent again; and declared they would determine so in all time coming, not only as to money won at cards, dice, and horse-races expressed in the act of Parliament, but in all other games wherein money is win and lost; but, in respect the act was in desuetude, they would not determine so as to by-gones; "but found the letters orderly proceeded at the pursuer's instance against the defender, except as to 31 guineas, the other five guineas but 100 merks, allowed to be won in 24 hours."

*Fol. Dic. v. 2. p. 24. Harcarse, (SUMMONS.) No 937. p. 263.*