No 1. that payment of a bond [illegible] be proved by witnesses: And, though in some extraordinary [illegible] 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 Pitkenny; 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.—PACTUM 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.

74. Parliament 6th, James VI. ratified by 21st act, session 7th, 1st Parliament, King William. No 2.

THE LORDS found, That no action lay at the instance of the kirk-session of Inveresk against the kirk-session of Tranent.

C. Home, No 65. p. 113.

1745. *June 5.*

OVERSEERS of the Poor, in the Parish of DUNSE, *against* The HERITORS of the Parish of EDROM. No 3.

IT not being clear by acts of Parliament, whether a three or a seven years residence entitles a poor person to the charity of the parish; the matter was brought before the Court, by a suspension of a decree of the Justices of Peace, in order to have a rule fixed.

"Found, That the parish in which persons indigent, or becoming indigent, have resided, during the immediate three years preceding their application for charity, is bound to subsist and aliment such indigent and poor persons."

Fol. Dic. v. 4. p. 83. Rem. Dec. v. 2. No 65. p. 102.

*** Kilkerran reports this case:

ONE M'Caul, an indigent person, who had been born in the parish of Edrom, but who for six years last past had had a fixed residence in the parish of Dunse, brought a process before the Justices of the Peace of the shire of Berwick against the minister and treasurer to the kirk-session of Edrom, for having an alimentary provision settled by them upon him and his family; which the Justices very improperly sustained, and modified half-a-crown a-week, and decerned.

This decree being brought before the LORDS by suspension, and at discussing thereof, appearance made for the parish of Dunse, the question turned upon these points; 1*mo*, Whether the place of the person's birth, where that is known, ought not to be burdened with his maintenance, whatever time he may have resided elsewhere; or whether residence for a certain period does not entitle to maintenance; and 2*do*, If it does, Whether it be three years or seven years residence that entitles to it?

The first of these points was but faintly insisted on by the parish of Dunse, as it was plain, that the act 16th, Parl. 1. Session 3d, Charles II., which only burdened the place of the person's residence with his maintenance in case the place of his birth was not known, respected only the case of vagrants and vagabonds, who had no fixed residence any where: And the debate turned chiefly on the second point, Whether the three or the seven years residence was enough?