

parties might be made use of to cover the deceit. It is indeed possible that minors and onerous creditors may sometimes be unwarily imposed upon to accept such securities, not suspecting that they were originally the product of game; but this hazard was not thought of weight enough to be laid in the balance with the imminent danger which must arise from false and fictitious covers which might be made use of in play-debts. It is a maxim in law, That every one ought to know the condition of the person with whom he contracts; which must apply in the present case, at least, with equal force, where the exception against the original debt is established by a statute, which occurs in other instances where the onerosity on the part of the creditor would not be available, supposing the bill laboured under the exception of falsehood or force; and yet these would as little appear from the face of the bill as this; nor can the reason be other than this, that the bill being null *ab initio*, is thereby incapable of conveyance. See the law 2. § 1. et l. 4. § 2. De Aleatoribus. And as to the precedents quoted for the indorsee, they are prior to the statute in question, and so cannot be obtruded to limit or restrain it; they are laid upon the act of Charles II. by which the provision is not so full and ample as in the present. Besides, they are instances which prove the artifices contrived to defeat the law, which makes it reasonable to presume they have given occasion to the enlargements made by the posterior act.

THE LORDS repelled the reason of suspension founded on the game-act, in respect the bill in question was purchased by the charger for onerous causes; and that there is no evidence offered of his being in the knowledge that the bill was granted for a game-debt.

*G. Home, No 142. p. 242.*

1740. November 7.

SIR ROBERT PRINGLE *against* ROBERT BIGGAR.

SIR ROBERT being creditor to Mr John Alves, used arrestment in the hands of Mr Biggar, who was debtor to Mr Alves in several bills, which were taken in the name of Mr Gilbert Pringle, as trustee for Mr Alves; and, in a forthcoming raised thereon by Sir Robert, Mr Biggar repeated a reduction of the bills upon the act 9th Anne, cap. 14. and offered to prove by Messrs Alves and Pringle's oaths, that the bills were granted for money won at game.

*Answered* for Sir Robert; That it was a maxim in law, that the oath of the cedent was not competent in prejudice of an onerous assignee, whether legal or voluntary, and as the statute had introduced no alteration from the common rules of law in this particular, they behoved to apply to the present case. The statute annuls bills, bonds, &c. granted for money won at play. It likewise enacts, That where a party loses at game and pays, he shall have action of repetition within three months, and that the party waning money at game, shall be obliged to answer upon oath, with respect thereto; but it no where says that such oath shall be probative against third parties, the onerous creditors of

No 57.

No 58.

In a reduction of a bill on the act of the 9th of Queen Anne, it is competent to prove by the winner or his trustee, that the same was granted for money lost at game, even against onerous assignees.

No 58.

the winners of such money; See Neilson's Abridgment, p. 893. Verb. GAMING. Cornelius Neilson against Bruce. No 56. p. 9507.

*Replied;* That the nullity in the security granted for money won at game was general, affecting all persons whatsoever, who had or might come to have interest therein, and was indeed a *vitium reale* in such securities, introduced by statute, with a *non obstante* as to all laws and customs in the contrary thereto. As to the mean of proof, by the oath of the winner at game, the words of the third clause of the act, declaring it competent, are general, as well as the nullity itself; and by the said clause, though the winner or original creditor in the bills were not a party to the suit, they might be compelled to answer upon oath, whether or not the sum in question was won at game, which must hold stronger in this case, where the winner at game, and his trustee, are the only parties called, or that properly fell to be called in this process of reduction. If it were true, that no more was necessary for avoiding the effect of the said clause, than for a gamester when he is sued upon the act, to get a creditor of his to arrest in the pursuer's hands, and plead, that the gamester, or his trustee's oath could not be taken, it is obvious, according to that explanation, the clause could be of no effect, seeing such a remedy could never be wanting; See July 1735, Gillon, February 1731, Pringle, (See APPENDIX.)

*Duplied,* The rules of law are not to be altered upon imaginary inconveniences, without statute; and as it is directed only against the winner, without speaking of onerous assignees, they are entitled to the common benefit of law; but there is really no inconvenience in the case, for if the loser be minded to take the advantage of the statute against the winner, he has no more to do but bring his action in terms thereof; and when the matter is rendered litigious, he will have the benefit of the winner's oath in prejudice of any onerous assignee, and if he is not disposed to take that benefit against the winner, but would take the advantage against an onerous assignee, there is no good reason why he should have right to such an option; for even after he has paid to the onerous assignee, still he has action against the winner.

THE LORDS found, That the reason of reduction, that the bills in question were granted for money lost at play, was probable by the oath of Gilbert Pringle and John Alves, or either of them.

*Fol. Dic. v. 4. p. 33. C. Home, No 156. p. 265.*

1741. February 18.

STEWART against HYSLOP.

No 59.

IN the question betwixt these parties, the LORDS found, That it was not competent to prove by witnesses, that the bill charged on was accepted for money lost at game, against an indorsee for an onerous cause, who was not privy to the wrong. See No 56. p. 9507.

*Fol. Dic. v. p. 4. 34. C. Home, No 162. p. 275.*