interest of both husband and wife. It is now demanded that this woman should be forfeited because she has *assigned* by marrying. A hard construction in the eye of the law. She has done nothing but what the law of God and man allows, and even encourages. This is the harder, as it is possible the woman did not mean to offend her master. How can I suppose that the collateral heirs of the woman were provided for, and not the heirs of her own body? How can she be forfeited for marrying, without which she could have no heirs of her body? I thought that, even although the old law were to be continued in force, and although Lord Stair were now sitting on the Bench, the woman would have been maintained in possession. Whatever words may have dropped from any of us, we all venerate the great lawyers from whom we have learned all that we know. They proceeded upon old ideas, and have been copied by later writers. I am much moved by Lord Coalston's observations as to the custom of the country. I know, in the west of Scotland, examples similar to those which he has mentioned in the east. To the opinions of lawyers add the general consent of a country, and I shall give up all arguments of expediency.

On the 10th May 1775, "The Lords sustained the defence."

Act. J. Dickson, R. M'Queen. *Alt.* Ilay Campbell.

Diss. Alemore, Monboddo.

Report by Lord Justice-Clerk, Ordinary, then hearing in presence; and then Report by Mr Alexander Lockhart of Covington, Lord Probationer.

1775. *June* 15. KIRK-SESSION of DUMFRIES *against* KIRK-SESSION of KIRKCUDBRIGHT and KELTON.

POOR.

The Poor of the parish where the wager was laid, is entitled, by the Act of Parliament 1621, to the surplus of money won upon a horse-race above 100 merks.

[*Faculty Collection, VII.* 88; *Dict.*, 10,580.]

AUCHINLECK. Dumfries was the *locus contractus* and *locus delicti*, and ought to be preferred.

GARDENSTON. I think that Kirkcudbright ought to be preferred. The Legislature thought of what generally happens: the winning generally happens where the contract is made; but here the winning fell out in the parish of Kirkcudbright. Kelton can have no right, because the winning did not *fall out* until Major Maxwell arrived at Kirkcudbright. Indeed, if he had not gone there, the wager would have been a drawn bet.

COVINGTON. If we hold this to be a *casus improvisus*, Major Maxwell has a better plea than any of the kirk-sessions, for he might plead that his case falls

not within the statute, and therefore that he may keep the money. We ought to consider what the statute meant to correct. The offence was gaming: it was committed in the place where the match was made.

MONBODDO. I would prefer Kirkcudbright. I may lay a wager at Edinburgh, but if the game is played at Dumfries, or anywhere in the country, I do not lose at Edinburgh: if it was proved that Mr Blair gave up the match in the parish of Kelton, I would prefer that parish.

COALSTON. The statute must be the rule of our judgment. The question is, Whether did the winning fall out at Dumfries? I think that it did not; but at Kirkcudbright.

ELLIOCK. The wager was made, and was won at Dumfries. Suppose that two persons, residing at Dumfries, had betted on this race, would not the bet have been lost at Dumfries, though the race ended at Kirkcudbright?

KAIMES. The question is, What shall be the rule in a case which the statute had not in view? As there appears no natural preference for Dumfries, we ought to adhere to the words of the statute.

JUSTICE-CLERK. I incline to give the cause in favour of the *locus contractus*. Wagers are made on horse-races at a distance from the residence of the wagerers: the bets must be determined at the place of contracting. The offence is committed by laying the wager. If the race had been to Carlisle, beyond the law of this country, the winning would have been held to have fallen out at Dumfries.

ALVA. The statute is against gaming: *where* the gaming happens, *there* the offence is committed.

KAIMES. The parties, after having made their match, might have repented and not run the race; so that nothing against the statute was done at Dumfries.

PRESIDENT. I cannot interpret this statute judaically. We know that the statutes of those times were not composed with the strictest accuracy of language. The place where the bets were made is the place to be preferred. Many cases may be put to perplex. I will put one that is plain: Suppose that the match had been from Dumfries to Carlisle; that one of the parties had given up at Longtown, and the other rode on to Carlisle, will it be said that the winning did not fall out in Scotland, and, consequently, that no action lies?—or, suppose that the match had been from Carlisle to Dumfries, that one of the parties had given up by the way, and the other had gone on to Dumfries, will it be said that a bet lawfully made at Carlisle, shall become unlawful at Dumfries?—and that the winner, who betted lawfully, should be obliged to refund his winnings?

On the 15th June 1775, "The Lords preferred the kirk-session of Dumfries."

For Dumfries, D. Armstrong. For Kelton, N. Ferguson. For Kirkcudbright, H. Erskine.

Diss. Kaimes, Coalston, Gardenston, Monboddo.