

No 11.

N. B. The pursuer, in his answer to the last petition, joined issue with the defender's request to the Court, at any rate, to lay down regulations for fixing the time of holding meetings that shall have power to make assessments, and other particulars; but the Court waded their interposition, which, it was observed, had been refused in other cases; and that, if they chanced to differ among themselves, it would be more proper to resort to the judge-ordinary in the first instance.

Fol. Dic. v. 4. p. 84. Fac. Col. No 47. p. 124.

* * * The reporter has omitted to mention what the interlocutor of the Lord Ordinary was to which he says the Court adhered.—THE LORD ORDINARY found, that the Heritors were at liberty to levy the assessment for the maintenance of the poor upon the real rent in the parish, notwithstanding of any former practice of levying it upon the valued rent.

1775. June 15.

KIRK-SESSION OF DUMFRIES *against* KIRK-SESSIONS OF KIRKCUDBRIGHT
and KELTON.

No 12.

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

IN the question betwixt Maxwell and the Representatives of Blair, whether a bill granted for L. 150 Sterling, as the balance of L. 200 won upon a horse-race, was actionable? which the Lord Ordinary had found it was, and passed a decree for payment of the principal sum, and interest in favour of the pursuer; the Court, upon a review, having been of opinion that the act of Parliament 1621, c. 14, founded on by the defenders, could afford no defence, and that it was not in desuetude; and ordained the clerk to this process to intimate to the kirk-sessions after mentioned, that they may appear for their interests in this cause, (as reported No 65. p. 9522, *voce* PACTUM ILLICITUM.) The pursuer preferred a reclaiming petition, praying the Court to find that the above act of Parliament was in desuetude, and to adhere to the interlocutor pronounced by the Lord Ordinary; but the defenders having declined to answer it, appearance was made for the Kirk-sessions of Dumfries, Kirkeudbright, and Kelton, who put in answers: And for shewing that the statute was not in desuetude, the following decisions were cited; Park against Somerville, 12th Nov. 1668, No 1. p. 3459.; Straiton against L. of Craigmillar, 19th July 1688, No 55. p. 9506.; Hill against Ramsay, 9th February 1711, No 1. p. 10551. relative to money won at cards and dice; and Sir George M'Kenzie's observations on the statute 1621.

The Court, from these instances, were confirmed in their opinion, that the act was in observance. It was also remarked on the bench, that this was a wise and salutary law, entitled to a liberal interpretation; not prohibiting, but confining gaming and racing within proper bounds, and only benefiting the poor, at the expense of sharpers, and so lessening the incitement to them to

prey upon inconsiderate youth : As also, that there was no room for a distinction between gaming at cards, dice, and horse-racing, or between horse-races upon roads and on sands, or other race-courses ; and lastly, that the act 9th Queen Anne, c. 14, by which it was contended the other was repealed, did by no means apply either to Scotland or to this case. Accordingly, on the 16th December 1774,

THE COURT " adhered to the former interlocutor, and remitted to the Lord Ordinary to hear parties as to the respective interests of the Kirk-sessions." Which having been done, the point was reported to the Court.

It was agreed on all hands, as to the nature and issue of the wager itself, that it was a bet laid at Dumfries between Maxwell and Blair of Dunrod, upon a horse-race from that place to the town of Kirkcudbright ; each party to ride his own horse ; and that he who got first to Kirkcudbright should be the winner : That the race was accordingly run ; that Mr Blair being taken ill during the course, was able to proceed no farther than Furbar, in the parish of Kelton, while Mr Maxwell pushed on to Kirkcudbright ; and on his arrival there, the judges of the race declared him the winning party. And the question resulting from the foregoing judgment was, whether the poor of the parish of Dumfries where the bet was laid, or the parish of Kirkcudbright, the ultimate destination of the race, or the parish of Kelton, where Mr Blair and his horse were knocked up, were entitled to the surplus winning. This, again, hinged upon the construction of the following clause of the statute : ' And if it shall hap-
' pen any man to win any sums of money at earding or dycing attour the sum
' of an hundreth merks, within the space of twenty-four houres, or to gain at
' wagers upon horse-races any sum attour the said sum of an hundreth merks,
' the superplus shall be consigned, within twenty-four hours thereafter, in the
' hands of the treasurer of the kirk, if it be in Edinburgh, or in the hands of
' such of the kirk-sessions in the country parochines as collects and distributes
' money for the poor of the same, to be employed always upon the poor of the
' paroche where such winning shall happen to fall out.'

THE COURT pronounced the following judgment : " Find, That the poor of the parish of Dumfries were entitled by the act of Parliament to the sum in question." And afterwards refused a reclaiming bill for the Kirk-session of Kirkcudbright, without answers.

For pursuer, *Crosbie.*

Defenders, *Wight.*

For Dumfries, *Armstrong.*

For Kelton, *N. Fergusson.*

For Kirkcudbright, *H. Erskine.* Clerk, *Kirkpatrick.*

Fol. Dic. v. 4. p. 86. Fac. Col. No 183. p. 88.