

*pem causam :—Mulier turpiter facit, quod sit meretrix, sed non turpiter accipit mercedem cum sit meretrix ; and l. 8, ibid. In turpi causa, ex mutua turpitudine, potior est conditio possidentis :* so that Janet Jack having the bond, the Marquis, who is *in eadem turpitudine*, cannot object. *2do.* Though this were relevant, seeing the bond bears borrowed money, it is only probable *scripto vel juramento* of the assignee. And, as to the discharge, there is a reduction against the same produced : *first*, Upon extortion and force, that it was granted by the said Janet when she was kept close in a chamber in Dowglass. *2do.* Upon minority.

It was REPLIED, That the allegiance from the civil law is an assertion of Ulpian, who was a heathen, and is rejected by all Christian nations, and by our custom : and, albeit the parity of the turpitude might hinder restitution, because *potior est conditio possidentis*, yet the Marquis not having paid, he is in possession of the sum *et in potiore casu*. And, whatever might be alleged as to obligations *ex post facto*, which were not anterior to, and the inducements of, crimes, it is notour this bond was granted to induce fornication ; that Janet Jack became an impudent strumpet to the Marquis and others. And, as to the reduction of the discharge *ex metus causa*, it is not relevantly libelled ; but, however, there are produced several letters posterior to the bond, requiring Janet's mother to deliver up the same, in respect of the discharge granted before. And, as to the minority, the discharge bears a promise, upon Janet's great oath, never to quarrel the same ; and, by the authentic *sacramenta puberum*, and by the custom of this kingdom, such oaths exclude the restitution of minors.

It was DUPLIED, That this bond contains only an assertion, but no oath, unless the name of God had been invocated ; and the acting contrary to such assertions, infers no perjury.

The Lords found, That the want of a cause was not relevant to reduce the bond ; but, in respect of the notoriety, that the cause expressed *of money lent*, could not be true, they ordained witnesses to be examined what was the true cause of the bond, before answer as to the turpitude, or as to the oath ; but found, that the letters produced did sufficiently elide the allegiance of the extortion of the discharge.

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1681. *January 13.* THOMAS GARVEN *against* DOCTOR TROTTER.

THOMAS GARVEN pursues a reduction of a decret-arbitral pronounced by Patrick Tailzifer between Doctor Trotter and him, in which Patrick did allow two receipts by Garven, as several payments, where the sums were near one, and the day of the receipt the same ; but, to make them appear two, the date of the one was vitiated.

It was ANSWERED, That the decret-arbitral is opposed : and arbiters do not insert particular debates and interlocutors in their decreets, nor keep they any thing upon record ; but they do proceed upon the acknowledgment of either parties, and upon such probation as are sufficient to convince good men, although not having all the solemnities requisite in law ; and therefore the arbiter ought to be examined, if these discharges were produced to him, and allowed by him as

distinct, and whether the parties did acknowledge the same, and made objection against them.

It was REPLIED, That this could not be proven but by the oath of party or writ.

It was DUPLIED, That, if this hold, all decreets-arbitral import nothing, seeing they never express the points in debate, nor the probation ; but seeing both parties did trust the arbiter, though they may question his opinion or judgment, yet they cannot refuse his oath what was done in matter of fact, or what was produced or acknowledged before him, especially *ex intervallo* ; unless, immediately upon intimation, or pronouncing his decret, they had protested against any particular which he had sustained, either in relevancy or probation.

The Lords, before answer, ordained the arbiter's oath to be taken.

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1681. *January 27.* The BISHOP of ABERDENE *against* The VISCOUNT of KENMURE.

THE Bishop of Aberdene, having right to an infeftment of annualrent, in security of 10,000 merks, out of the barony of Corsmichael, pursues a pointing of the ground.

Compearance is made for the Viscount of Kenmure, who ALLEGED Absolvi- tor ; because, before this infeftment of annualrent, the lands in question were appraised by one M'Bryer, whereunto the Viscount of Kenmure stands now infeft by progress from M'Bryer.

It was ANSWERED, That M'Bryer's appraising being disponed to the Laird of Lawers, he ratified this annualrent ; and the Viscount, having right by progress from Lawers, cannot quarrel the same.

It was REPLIED, That this ratification is not relevant against a singular successor ; for, though Lawers had disponed his appraising in corroboration of this annualrent, it would have had no effect against singular successors, unless Lawers's consent had been a ground of their infeftment ; otherwise all singular successors would be insecure, and the excellent statutes for securing purchasers would be elided : for a person, having an irredeemable disposition, may give ratifications, assignations, and back-bonds restricting, which would be effectual, if drawn in question before he were infeft, even against his singular successors by assignation ; but, if the matter were not made litigious before infeftment, after infeftment such personal rights from the authors would have no effect against singular successors. And albeit appraisings may be so restricted and affected during the legal, when they are but legal diligences for security, and if they become litigious before expiring of the legal, they will be effectual against singular successors, acquiring right even after expiring of the legal ; otherwise the effect of all these personal deeds ceases so soon as the appraisings become irredeemable rights ; or else a great part of the securities of the kingdom being founded upon infeftments, acquired from appraisers after the legal was expired, they might all be rendered uncertain.

It was DUPLIED, That this ratification was within the legal ; and, being once effectual against singular successors, cannot, *ex post facto*, cease to be effectual by