

1707. March 7.

IRVINE *against* SKENE.

No 21.

AN assignation by an adulteress to her adulterous son, was not found null on that score at the instance of the cedent's executor, *qua* nearest of kin, the act 119th, Parliament 1592, relating only to dispositions of heritage.

*Fol. Dic. v. 2. p. 21. Forbes.*

\*\* This case is No 19. p. 6350. *voce* IMPLIED CONDITION.

1765. June 26.

SIR WILLIAM HAMILTON of Westport *against* MARY DE GARES, *alias* BONAMY, and MARY BURTON-HAMILTON.

No 22.

SIR JAMES HAMILTON of Westport granted an heritable bond of annuity, for L. 40 Sterling, to Mary de Gares, *alias* Bonamy, of the Island of Guernsey, the wife of John Bonamy, of that island. He granted a like bond for L. 20 *per annum*, to increase to L. 30, upon the death of her mother, to Mary Burton, *alias* Hamilton, the daughter of Mary de Gares, by Sir James himself, as was supposed.

Upon the death of Sir James, the estate of Westport devolved on his nephew by a sister, William Ferrier, son of John Ferrier, writer in Linlithgow, who assumed the name of Sir William Hamilton.

Actions were brought by Mary de Gares and her daughter, for payment of their annuities; and Sir William insisted in a reduction, upon the ground that the bonds were null, as granted *causa adulterii*; and, therefore, *ob turpem causam*.

*Answered* for Mary de Gares, There is no evidence of any *turpis causa*; the bond bears to be granted for good and weighty reasons, and onerous considerations. And, allowing it to be true, that Mary de Gares lived in adultery with Sir James, it does not follow, that the bond was granted on that account. It was not given as an inducement to her to leave her husband, for it was granted long after she had left him, and probably with a view of putting an end to the connection. At any rate, the rule of the law is clear, *Turpiter facere quod sit meretrix; non turpiter accipere, cum sit meretrix; l. 4. § 3. D. De Conduct. ob turp. caus.* The first violation of her chastity is an act of turpitude; but, after having taken that fatal step, there is no longer any turpitude in her receiving the wages of prostitution, which is now perhaps her only resource.

A bond of annuity was granted to a woman living in a state of adultery with the granter, and a similar bond was granted to her daughter, who was supposed to be the daughter of the granter also. The Lords found, that no action lay on the bond granted to the mother, but sustained action on that granted to the daughter.