

ring; or what solid reason can be given for maintaining, that the Magistrates, who are unquestionably entitled to sue a person who has escaped from prison, in order to their recovering the sums paid to his creditors, may not, by a previous agreement, voluntarily entered into on his part, provide for their indemnification? Erskine, b. 3. tit. 2. § 31.; Kilkerran, 1st February 1749, Thomson against Colvill, No 190. p. 1632.

“THE LORD ORDINARY over-ruled the defences.”

After advising a reclaiming petition with answers, one of the Judges seemed to think, that, independently of the alleged illegality of the transaction, the indorsation not being in security of a debt, but of a contingent or eventual claim, could not give the holder the privileges of an onerous indorsee. But the majority of the Court being of opinion, that such an agreement as here occurred, if not absolutely illegal in its own nature, was of an improper tendency, and not to be permitted; it was on this principle that

“THE LORDS altered the judgment of the Lord Ordinary, and sustained the defences.”

Lord Ordinary, <i>Dreghorn.</i>	Act. <i>Blair.</i>	Alt. <i>Cullen.</i>	Clerk, <i>Gordon.</i>
C.	<i>Fol. Dic. v. 4. p. 31.</i>	<i>Fac. Col. No. 71. p. 128.</i>	

S E C T. V.

Bond granted *Causa Adulterii.*

1622. July 20.

DURHAM against BLACKWOOD.

THE LORDS found a bond of 5000 merks given by the Laird of Blackwood to Helenor Durham, daughter to Sir James Durham, and to Weir, daughter procreated in adultery betwixt the pursuer and defender, to be null, by way of exception, as given *ob turpem causam adulterii.*

-*Fol. Dic. v. 2. p. 21. Haddington, MS. No 2654.*

. Kerse reports this case.

BOND made by the adulterer to the adultress, and bairns gotten betwixt them, found null *ipso jure*, and ordained to be riven.

Kerse, MS. fol. 46.

No 18,

No 19.

* * * This case is also reported by Durie.

No 19.

WEIR of Blackwood being married upon a daughter of the Lord Elphinston, in the time of his marriage begets a bairn upon Helenor Durham, daughter to Sir James Durham, and, after the birth of the bairn, gave a bond to the mother, to provide that bairn to a certain sum; which bond being desired to be registered by the woman against the maker, the LORDS found, that it ought not to be registered, and that it could produce no manner of action, neither in favour nor at the instance of the woman, nor at the instance of the bairn, in whose favour it was conceived; seeing it was a writ given for reward of adultery, albeit that cause was not therein expressed; for it was given to one begotten in an adulterous conjunction, which was not allowable; and, therefore, the LORDS found that it was null, and could not produce action at no person's instance, being given *ob turpem causam*, albeit the cause of the turpitude preceded the giving of the bond; for it was alike, being *præmium adulterii et turpitudinis*.

Act. *Stuart & Hamilton.*

Alt. *Hope.*

Clerk, *Scot.*

Durie, p. 31.

1042. June 25.

ROSS against ROBERTSON.

No 20.
Contrary to
the above.

ONE Mungo Ross having begotten two daughters upon one Robertson, thereafter gives her a bond, to pay to her 1000 merks at a term; and, failing of her, by decease, before the term, to pay it to their said bairns. The woman being married upon an husband, charges to pay the sum, and the man suspending, that it was given *ob turpem causam*, for the said cause of adultery; the LORDS rejected the reason, and sustained the bond, neither respected they that it was alleged, that the bond was given *ob causam adulterii, tanquam causa turpis fuerit*; seeing it is said in law, *Quod mulier turpiter facit cum sit meretrix, sed cum sit meretrix accipiendo non facit turpiter*; though the suspender answered, That etiam acceptum *ob præmium adulterii auferendum est a muliere*; which was repelled: And the suspender further alleging, That, in respect of the tenor of the bond, providing the sum to the bairns, in case the woman die before the term, therefore, and in respect of the cause itself, in all equity, the woman, who is now married on an husband, ought only to have her liferent use of the sum, and that the fee thereof should pertain to her bairns; this allegation was also repelled, in respect the woman survived the term of payment, and the fee was found to pertain to her.

The Suspender per *Larvie*.

Alt. —.

Fol. Dic. v. 2. p. 21. Durie, p. 396.