

S E C T. XIX.

Turpis Causa;—Proof of the Tenor,—how Proponabe.

No 79.

In a reduction of a bond at the instance of the granter's heir; pleaded against the creditor, that he was only a name for a *pelles* of the deceast, consequently there was *turpis causa*.

Found that this, implicating a charge of adultery, could not be thus incidentally inquired into.

1624. February 18. FERNE against Captain WISHART'S HEIR.

IN an action betwixt the heir of umquhile Captain Wishart, and one Ferne, whereby a bond was desired to be registrate, at the instance of Ferne, against the heir foresaid, which bond was made to the said Ferne, by umquhile Captain Wishart, containing the sum of 1000 merks; against the which the defender using for an exception, his action of reduction of the said bond, and reasons thereof, viz. that the name of the creditor insert in the bond, was only borrowed, to the behoof of Katharine Leyes, who was concubine to the Captain, giver of the bond, with whom he conversed, and the same granted to her, he having then a married wife, and so the same being given *ob turpem causam et ut præmium adulterii*, ought not to be sustained, to produce any action thereupon. THE LORDS found, That this defence and pursuit of reduction, tending to the trial and probation of a fact of adultery, was prejudicial, and in effect a pre-cognition to a criminal pursuit, which might be moved against the woman, for adultery committed by her; which being moved before the Justices, this action preceding, might be a probation to the Justices, and assize, whereupon her life might be indamaged; and therefore found, that the trial of that turpitude could not be taken in this pursuit, or defence, which tended so prejudicially to the conviction of the party, and hazard of her life before the Justices; and consequently found no process, in the reduction, and repelled the defence of the alleged turpitude, while the same should be tried before some ordinary and competent judge.

Act. Aiton & Stuart.

Alt. Hope & Nicolson.

Clerk, Gibson.

Fol. Dic. v. 1. p. 176. Durie, p. 112.

1701. June 12.

MEIN against DUNSE.

No 80.

In an impro-bation of the grounds and warrants of an inhibition *in re antiqua*, a proving of the tenor was re-

THE Lord Crocerig reported Mr Andrew Mein of Eastmoriston *contra* Mr Thomas Dunse of Graveldykes. Bell of Racleugh, John Dunse, and Wilkieson of Eastmoriston, grant bond to John Sheill for L. 1200 in 1652; and Dunse having paid the debt in 1653, he took assignation thereto, and pursued the heirs of Wilkieson in 1662, and obtained a decret against them, whereon he served inhibition, and adjudged, and pursued for mails and duties. Mein acquires the