

*alleged and answered* by the said Henry, That he made the same before the said sentence of divorce, and intending of the said action. It was *answered* by the said pursuer, That the said revocation was not relevant, without he would say, that he made the same before the committing of the said crime, whereupon the said sentence of divorce proceeded. Whilk allegiance of the said Christian was admitted, and found by the Lords, that the allegiance of the said Henry was not relevant, without he would allege the said revocation to be made before the committing of the said crime, as said is.

Colvil, MS. p. 32.

No 3.

1579. May 16.

LADY BAUGHANAN *against* The LAIRD.

THE LAIRD of Baughanan-Lessly being divorced from his wife, *culpa sua*, was pursued by her to render again the tocher he had gotten from her, desired a time to call his warrant; and produced a contract made betwixt him and the LAIRD of Grant, father to his wife. In the whilk was contained, that she was content that the divorcement should be, and should pursue him for the same.—THE LORDS would give no warrant upon this contract *quia fuit partum contra bonas mores*.

Colvil, MS. p. 53.

No 4.  
A husband divorced for adultery, was pursued to return the tocher. He was not allowed, in defence, to show evidence, that the divorce had been obtained by concert.

1589. March

L. INNERWICK *against* The LADY.

AN heirefs divorced for adultery, loses not only her conjunct fee and tocher, but also the liferent of her heritage; and the courtesy takes place as if she were naturally dead.

Fol. Dic. v. 1. p. 23. Colvil, MS.\*

No 5.

1670. June 22.

ELISABETH LYLE, Relict of Archibald Douglas of Lumsdean, and JOHN DOUGLAS, her Son, *against* ARCHIBALD DOUGLAS, now of Lumsdean.

THE said Elisabeth as liferenter, and her son as fiar, having intended action against Archibald Douglas now of Lumsdean, upon a bond granted to them for the sum of 4000 merks, *super hoc medio*, That the father had disposed the estate of Lumsdean to the defender, with a reservation to burden the same with the

No 6.  
Tis unlawful for the person divorced, to marry the person with whom the adultery was committed, and the children begotten of such unlawful con-

\* The Decisions reported by Colvill Lord Culrois, preserved in the Advocates Library, come no farther down than 1584. The Editor has not yet discovered where Lord Kaimes found the above.—See General List of Names.

No 6.  
 junction, are  
 unhabie to  
 fucceed as  
 heirs to their  
 parent.  
 Act 20 Parl.  
 1600.

forefaid fum, and accordingly had granted them this bond, whereupon they now purfue.—It was *alleged* for the defender, That he could not be liable by virtue of the refignation contained in his right, becaufe it was only conceived in thefe terms, that he fhould have power to burden the lands with 4000 merks, at any time during his lifetime, without the addition of thefe words ‘*etiam in articulo mortis*,’ which in law did only import, that he might burden the lands when he was in his *liege pouftie*; whereas it was offered to be proven, that the bond granted to the purfuer was *in lecto ægritudinis*.—It was *replied*, That by our law, difpofition of lands, or burdening the fame on death bed, were only prohibite in prejudice of lawful heirs; whereas the difpofition was fo far from being granted to him as apparent heir, that he was gotten in adultery, after a fentence of divorce betwixt Manderfton and his wife, upon her bringing forth of the fame defender during her co-habitation with the deceased Archibald Douglas of Lumfdean, and fo his right fell within the 20th act, 16th Parliament, King James VI. declaring that children gotten in adultery, after divorce, were not capable of fucceffion, albiet they fhould be married after the fentence of divorcement.

THE LORDS did repel the defence, in refpect of the reply; and found, That the difpofition made to the defender being in prejudice of John Douglas, who was the only lawful apparent heir, being affected with the refervation forefaid, the bond made to him and his mother, albiet granted on deathbed, was obligatory, and that fuch refervations, rights, and difpofitions, made to ftrangers, might be made effectual by bonds granted *in lecto*. And whereas it was duplied, that the defender’s father and mother did co-habit by the fpace of twenty years, and that it was offered to be proven that he was married, whereby he was legitimate; THE LORDS would not fuftain the fame; becaufe, though it were proven, yet the marriage was null, and the defender incapable to be an heir by the forefaid act of Parliament.

*Fol. Dic. v. 1. p. 23. Gosford, MS. No 274.*

1681. July 15.

CREDITORS OF WATSON of Damhead *against* MARION CRUIKSHANK.

No 7.  
 Converfe as  
 man and wife,  
 held to be  
 paffing from  
 divorce. Co-  
 habitation  
 fufficient pre-  
 fumptive evi-  
 dence of con-  
 verfe.

THE Creditors of Damhead purfue reduction of a decret of divorce by the Commiffaries of Edinburgh, divorcing Marion Cruikshank from John Watfon of Damhead, her husband, for his adultery, upon thefe reafons: *imo*, That the Commiffaries committed iniquity in repelling this defence, That after the acts of adultery, the wife co-habited with her husband as man and wife, which imported her paffing from any prior injury known to her, feeing adultery doth not difolve marriage *ex pacto*, but is a crime upon which the party injured may defer the injurer, and crave to be divorced; but if the party injured, renounce or difcharge the injury, there is no place to crave divorce upon thefe acts of adultery; and the wife’s co-habitation, after thefe acts were evidently known, imports a renun-