

No 1.

and if he was in possession, the same was because he was servant and collector of fundry of the Earl's rents, as chamberlain to him, amongst which he intromitted with the said tiend, as said is, *more quo supra*, which he disposed again at the said Earl's command, and to his utility and profit unto his decease; and made compt and reckoning thereof to the said Earl, and others having power thereto of him, or by him, *et non alias*.—Which reply and allegiance of the said Lady, was admitted by the LORDS, and referred to her probation.

Colvil, MS. p. 4.

1575. June 16.

MURRAY and Tenants *against* LIVINGSTON.

No 2.

A husband divorced for adultery, cannot revoke a gift made to his wife, *stante matrimonio*.

TENANTS of certain lands pursued Henry Murray of Dunfermline, and Marion Livingston, for double poinding, to see which of them had most right thereto. The said Henry *alleged*, That he gave the lands to the said Marion, being his wife, not by contract of marriage, but of good will after the marriage; which thereafter he revoked; and, therefore, he should be answered of the duties of the said lands. And the said Marion *alleged*, That Henry infest her *constante matrimonio* betwixt them; and now the marriage was dissolved by sentence of divorce given against the said Henry, for adultery committed by him: And albeit he had revoked the infestment given after the decret of divorce, which he did not the time of the marriage, as now should not be admitted, because that he, in respect of the divorce, is *civiliter* dead; and, therefore, she should be answered of the duties of the said lands: Which allegiance of the said Marion was found relevant, and admitted by the Lords, and the tenants decerned to answer to her, of the mails and duties foresaid.

Colvil, MS. p. 23.

No 3.

A husband divorced for adultery, having executed a deed of revocation of a liferent of lands he had granted to his wife: to give effect to the revocation, he was bound to prove it was executed *before committing the crime*, as well as before sentence of divorce.

1576. July 9.

The Same Parties.

ANENT the action pursued by Christian* Livingston against Henry Murray in Dunfermline, her sometime spouse, it was *alleged* by the pursuer, That there was a sentence of divorce given betwixt her and the said Henry: By the which sentence she was ordained to bruike her conjunct-fee, liferents, terces, and all other things due to her by virtue of the said marriage. It was *alleged* by the said Henry, That there were certain lands, that he had infest the said Christian in, in liferent, after the said Christian's marriage with him; the which liferent and infestment he had revoked; and now, after the divorce, she should not bruike the same before the sentence of divorce, and intending of the said action. It was

* In the case above, the Lady is named Marion—The same person seems to be meant.

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.