

ADULTERY.

1573. December 19.

The COUNTESS of ARGYLE *against* TENANTS of Dollar, and the EARL of ARGYLE.

JEAN STEWART, Countess of Argyle, summoned the tenants of Dollar, to hear and see letters of the four forms given, and decreet conform, to compel them to answer and obey to her, of their teinds for years to run, conform to an letter of tack. The Earl of Argyle, brother to her husband, and one of the parochiners, *alleged*, That she shall have no letters, because the tack was made to umqle Archibald, Earl of Argyle, her husband and to her, the longest liver of them two, and to the said umqle Earl's heirs and assignees; and before the decease of the said Archibald, there was an sentence of divorce given betwixt them, for certain causes contained in the said sentence, by virtue of the whilk, the pursuer had tint all thing that she had of her husband by reason of marriage, and sicklyke all tacks that she was in by him; because it is to be supposed, that all letters of tacks set to a man and his wife, be obtained by the industry of the man; and she therefore ought and should tyne the same, by reason of the said sentence of divorce.—The pursuer *alleged*, That she should tyne no more, neither land nor other thing, but only so meikle as was given to her, or obtained by reason of the said marriage; and so this tack cannot come under this decreet, by reason the sament was set by her umqle husband and to her, the longest liver of them two, long after the completing of the marriage, by a stranger, and not by her husband, for the causes of marriage; and albeit such tacks may be conquest, may be supposed, and are supposed to be gotten by the man's industry, that is no cause in this case, that the woman should tyne the tack; because all things that is supposed to be by the law, is not admitted to be truth, where the contrary may stand.—Whilk alledgeance of the Lady was admitted by the LORDS, and letters decerned, conform to the tack, for answering and obeying her, conform to the desire of her summons.—Thereafter the said Earl, and the rest of the defenders, *alleged*, That the pursuer's umqle spouse had made Mr John Patoun cessioner and assigney to the said tack and terms to run, and profits thereof, by virtue of whilk the cessioner and assigney was in possession of the sament.—The pursuer *alleged*, That if the said Lord had made the said Mr John assigney, yet he never came in possession of the sament by virtue of the assignation;

No 1.

A tack was granted to the longest liver of a husband and wife. They were divorced. After the husband's death, the Lady's right continued.

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.