

No 389. test expediency in establishing some certain criterion, and not leaving a matter of this kind to the opinion or judgment of witnesses.

The *Regiam Majestatem* does indeed say, that the child must be heard to cry *within the four walls of a house*; but that addition appears only to be descriptive of what usually happens; and besides, there is no occasion, in the present question, to canvas whether that be necessary or not.

There is no foundation for distinguishing between this case and that of the courtesy or terce. The lawyers have made no distinction; on the contrary, Balfour and Stair have expressly laid down the law in the same way as to both.

THE LORD ORDINARY found, "That as Mrs Dobie did not live year and day after her marriage, and as it was not proved, that the child or *fætus* of which she was delivered was heard cry, the pursuer's claims on account of the marriage were resolved."

Upon a reclaiming bill and answers, "the LORDS adhered."

Act. *Armstrong.*

Alt. *Montgomery.*

Clerk. *Kirkpatrick.*

A. R.

*Fol. Dic. v. 3. p. 290. Fac. Col. No 24. p. 40.*

## S E C T. V.

Where the marriage is dissolved through the fault of the parties.

No 390. 1573. December 19- COUNTESS OF ARGYLE *against* TENANTS.

A TACK being let to a man and his wife, and longest liver of them two, the marriage having been afterwards dissolved through the wife's fault, yet it was found, that the tack ought still to subsist; because, although, in that case, all things given to the wife *intuitu matrimonii* must return to the husband and his heirs, yet such a tack let *stante matrimonio* was found not to be granted *intuitu matrimonii*.

*Fol. Dic. v. 1. p. 415. Colvil.*

\* \* \* See this case No 1. p. 327.