

voiced, though they cannot punish the crime; and so upon their sentence the escheat may follow: And the reason why a confession to a minister and his elders is not probative, is, because that is only *in foro pœnitentiæ* emitted *ad levamen conscientie* for taking away the scandal, and is not to be made use of farther, least it harden men in their sins. And reduction being also craved of a disposition, made by the Doctor to his second wife, because prejudicial to the children of his prior lawful marriage, it was *alleged*, That the 119th act of Parl. 1592; discharges adulteresses to dispone in prejudice of their lawful succession, which was *ab fragilitatem sexus*, but this does not disable the adulterer; for though *si quis comprehendit et si quæ*, yet it is not *e contra*.—*Answered*, There is the same parity of reason in both, which allows extension *etiam in statutis pœnalibus*; and the Lords had found so, 20th July 1622; Weir of Blaikwood *contra* Durhame, (Durie, p. 31. See FACTUM ILLICITUM.)—THE LORDS thought the case singular, and new, and therefore resolved to hear it debated in their own presence.

After a hearing, the LORDS inclined to sustain the gift of escheat on these two grounds complexly. 1mo, That the escheat in such crimes falls *ipso jure et ex lege, sine facto hominis*. 2do, That there is a formal gift here, on her being denounced fugitive, which is conjoined by way of reply, though the declarator on it was not yet come in.

*Fol. Dic. v. 1. p. 23. Fount. v. 1. p. 712. 820.*

1734. February 8. ANDERSON *against* WELSH.

WELSH of Locharret obtained a divorce from his wife. The wife had no more than 700 merks of jointure, and five children to maintain out of it. Having brought a portion of 6000 merks, she claimed the return of her tocher.—THE LORDS found she had no right to it.—(See this case mentioned in No 11.)

*Fol. Dic. v. 3. p. 19.*

1745. February 28. MACKENZIE *against* HIS WIFE.

COLIN MACKENZIE, Chamberlain of the Lewis, pursuing a divorce against his wife, after leading the proof before the Commissaries, a defence was offered of *lenocinium* on the part of the husband, and a condescendence given in of gross indecencies committed by him towards his wife, before company, of his maltreating her, and then leaving her in company with men of low rank and rude dispositions, and of his bidding his servants, and inviting other people, to ly with her: And it was *urged*, all this behaviour was intended to corrupt her morals, that he might thereby obtain an occasion to get quit of her.

The Commissaries allowed a proof of the condescendence. A bill of advocacy was offered and refused.

No 8.

No 9.

A wife divorced for adultery, has no claim for repayment of her tocher,

No 10.

*Lenocinium*. It is a competent exception against divorce, if the husband commit indecencies towards his wife, tending to corrupt her morals; although he do not expose her to prostitution for gain.