Injury either expressly, or tacitly by Cohabitation at Bed and Board with the Injurer, after the Act or Acts of Adultery were evidently known to the Party injured; there is no Place to crave Divorce thereupon; seeing such Cohabitation imports a Renounciation and Discharge of the Injury. Thus, a Decreet of Divorce for Adultery committed by a Husband, was reduced upon this ground of Origin that the Wife's cohabiting with the Husband after her Knowledge of the Adultery, by the Husband and his Whores confessing it in the Kirk-Session and doing Penance for it in the Church, and two Children born in the Adultery: was not sustained as a sufficient passing from the Adultery, unless she had cohabited with him after the Adultery was known to her, by judicial Acts or a legal Sentence against him for it. And the Wife's cohabiting with the Husband in the same House, was sustained as a sufficient presumptive Proof of her Converse with him as a Wife; unless she proved that she withdrew from his Conversation, and stayed in a Room separate from him: in which Case her remaining in the House with him, was not sustained relevant to infer her passing from the Offence, unless it were proved that she had carnal Dealing or at least lay in Bed with him. 15 July 1681 Creditors of Dunhead contra Cruikshank. Nor was a Husband's Adultery sustained as a legal Ground of Divorce, when the Wife, by Collusion with her Husband then Bankrupt and retired to a Sanctuary, gave Way consented to his lying with a Whore before Witnesses; to the End they might be divorced, and she recover her Jointure for their Intertainment to the prejudice of his lawful Creditors eod die inter eosdem. It is a sufficient Exception to Stay Divorce for Adultery that the Pursuer hath also committed Adultery with another. C. 39. f. solit. matrim. Spotswood Pratt. tit. Divorcement. Frangonti, eodem, p. 238 Frangatur eidem. tad. pratt. 18 December 1610 Lady Guthry Supplicant contra L. Guthry

N. In a Process of Divorce for Adultery, the Adultery was sufficiently proven by Witnesses not agreeing in the same individual Act Time & Place, but one of them deponing upon an Act of Adultery committed at one Time, and another swearing to an Act at another Time 25 Feb. 1667 Lady Milnton contra L. Milnton. Because Adultery is crimen genericum inferred by reiterable secret and transient Facts.

The Ground of Divorce for wilful Desertion, is drawn from 1 Corinth. 7. 15. where St. Paul speaking of an Unbeliever departing from his Wife or from her Husband, tells us, that in such a Case The believing Party is not under Bond. Which is an Intimation, that the Bond is dissolved meerly for Desertion or Forsaking. Nor is this inconsistent, with what is delivered by the Evangelists (Matth. 5. 32. 19. 9. Luke 16. 18.) as the Doctrine of our Saviour, that whosoever shall put away his Wife except for Fornication, and shall marry another committeth Adultery. For there the Cause of Divorce in the general is not determined; but that special Kind of it by putting away with a Bill of Divorce allowed among the Jews for the Hardness of their Hearts, and taken away under the Gospel. Now tho a Wife cannot be put away save for Adultery that doth not conclude, that Marriage cannot be dissolved by the wilful running away of one of the Partys, who cannot be said to be put away. Divorce for wilfull

Desertion

Desertion is in Scotland expressly ordered and regulated by Law Act 55 Par. 4. J. 6. The Form of which Process seems to be borrowed from the Saxon Law Schneidewin ad tit. inst. de nupt. §. 4. de divortio. Harprecht ad §. ii. inst. de nupt. n. 13. et sqq. A Wife remaining in her Husband's House and refusing him Access to her, may be called a wilful Deserter. Mckenzie Observ. on d. act. 55. But a Man's simple Absence in following any lawfull Employment abroad is not accounted wilful Desertion, if he be content to accept of and entertain his Wife: for she is bound to follow him to the World's End wherever he is, Stair lib. 1. tit. 4. §. 8. Law seems to require 4 years wilful Desertion, before the Deserter may be cited and sentenced to adhere d. Act. 55. But the Commissaries decern to adhere upon a Year's Desertion, or less Time thinking it sufficient that 4 years precede the Decreet of Divorce Mckenzie ibid. Albeit Citation at the Peer and Shore of Leith to those out of the Country, or at the dwelling Houses of such as are within Scotland, be sufficient in other Cases: yet Sir George Mckenzie (ibid.) seems to think a personal Citation necessary in this Case, where Malice is required, and the Loss irreparable. It is a sufficient Defence for one called to adhere, that the Pursuer hath committed Adultery; tho he be not convicted of Adultery before any Judge Spotswood ibid. If the Deserter, after being charged and denounced upon a Decreet of Adherence continue obstinate, the Church excommunicates him: and then the Commissarys proceed to Divorce, the 4 years being always expired d. Act. 55. Which 4 years in the Opinion of Sir George Mckenzie (ibid) should run from the Date of the Citation or Requisition to adhere: but the Commissaries ordinarly compute them from the Time of the Withdrawing or Desertion. Sir George Mckenzie (inst. lib. 1. tit. 6. §. 17.) insinuates, that a Divorce for non-Adherence may be pursued before either the Commissaries of Edinburgh, or any inferior Commissary to whose Jurisdiction the Partys are subject. But the an Action for non-Adherence may be pursued before any inferior Commissary Act 55. Par. 4. J. 6. yet the Commissaries of Edinburgh are only competent to divorce for non-Adherence: because these have by Law (Act 6. Par. 20. J. 6.) the sole Power to decide in all Causes of Divorce. The Pursuer of a Divorce for non-Adherence, is bound to swear, that the Process is not carried on by Collusion Mckenzie Observ. on d. Act 55. After Decreet of Divorce is obtained, the Person guilty forfeits all Benefit by the Marriage d. Act 55. But the innocent or injured Party, hath the same Benefit, as if the other were naturally dead 21 March 1637 L. Manderston contra L. Renton. That is, if the Wife's Fault occasion the Divorce, she loseth her Jointure, Tocher and donationes propter nuptias and whatever else fell to the Husband jure mariti during the Marriage: and a pari, if it proceed from the Husband's Fault, she gets not only her Tocher back again, but also gets

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