L. Bargany. And if a Husband in his Wifes Lifetime paid her Debt, he cannot repete it after her Death. A Husband is not liable for his Wifes Debt as Executrix, if she hath left any visible Estate to her Representatives till these be first discussed 23 January 1670 Wilkie contra Stewart and Morison. So a Decreet against a Husband and matrimonio for his Wifes Debt is effectual against him solu to matrimonio, in so far as her Legal Share of his Moveables extend 7 Feb. 1629 Brown contra Dalmahoy. And a Husband after Dissolution of the Marriage, is liable to his Wifes Creditor according to the Value of her Liferent Duty resting at her Death and intromitted with by the Husband, for Payment of a Debt not constitute against him by Decreet while the Marriage stood; tho these Liferent Duties belonged to himself jure mariti because he should have no more of his Wifes Means jure mariti, than is free of Debt 1 Feb. 1662 Cunningham contra Dalmahoy. But a Wifes Moveables falling under the jus mariti cannot be burdened with her Debt save in a subsidiary Way; the Heritable Estate and Executory being first discussed and exhausted: In Regard the Husband is not liable for his Wifes Debts, so long as there is any heritable or moveable Estate belonging to her Representatives, which might satisfie these Debts 27 Feb. 1683. E. Levin contra Montgomrie. A Wifes Funeral Expences come not off her Husband, but affect her Executors to whom she left sufficient Means to defray the same 16 January 1706 Sithwi contra Gardner. But a Husbands Heir was made to pay the Funeral Charges of the Husbands Relict dying in Widowhood, without any Estate or Effects of her own out of which the said Charges could be satisfied Novemb. 1691 Heriot contra Blyth and Muir.

2.

Dissolution of Marriage by Divorce.

Marriage ex intentione partium is perpetual till Death loose it and cannot be made for a Time: because it is not only a civil but a divine Conjunction of that Nature, that it cannot be dissolved without Detriment to either Party. That is, Marriage considered Simply and absolutely, cannot be dissolved by Men at their Pleasure But it is not so indissolvable, that it may not be dissolved for a Cause which God approves as just. For the Indissolvability was not instituted for a Punishment, but for the Comfort of innocent Persons; but it admits of an Exception, wherein God escapes to convoin. Marriage is therefore dissolved by Divorce.

Divorce, is the Separation of married Persons in their Lifetime, by the Sentence of the proper Judge; that is, the Commissarys of Edinburgh, who have the sole Power to decide in all Causes of Divorce Act 6. Par. 20. J. 6.

A Sentence of Divorce is either declaratory, or pronounced for some Cause emergent during the Marriage.

A declaratory Sentence, is that which declares Marriage void from the Beginning: which may be done upon several Accounts.

1° Marriage may be annulled from the Beginning, because either Party stood married

married before to another yet living, called Precontract: for only solutus cum solutâ can marrie. By the Law of England if a Man marry a Woman precontracted or married before to another and hath Children on her they are his Children till the Divorce, and then they are Bastards Coke 2. Inst. 93. The first Husband may compell her by Sentence in the Spiritual Court to adhere to him, without any Sentence of Divorce from the second Marriage Buntings Case Moor 109. 4 Rep. 29.

2° Marriage may be annulled upon Account that the Parties are within the forbidden Degrees of Consanguinity or Affinity contained in the 18 of Leviticus. Marriage in the nearest Degrees was necessarily dispenced with in the early Days of the World: as in Adam's Sons, who had no other but their Sisters to go in to and in the Children of Noah's Sons who behoved to marry their own Sisters or the Children of their Father's Brethren: Abraham's marrying his half Sister by the Mother, and Amram Moses's Father's marrying Jehobed his own Father's Sister. But the original Command to encrease and multiply, was, after the World was competently peopled, restrained by Moses, who laid down Rules and Prohibitions concerning the Degrees of Kindred and Affinity, formally and particularly given to the Man: because in the Act of procreating the Wickedness &c. he is properly the first Agent and the Woman only consenting to it; but the Reason extends them to her. For if the Law forbids a Son to marry or defile his Mother, it is not to be questioned that it makes it unlawfull for the Mother to have carnal Knowledge of her Son: and so in all the other Particulars.

3° Marriage may be declared null because of the natural Unfitness of either Party to concur in the Work of Generation; which is called Frigidity in the Man or Impotency in the Woman, tho that Word impotency be often promiscuously applied to both Sexes. This is a Cause for declaring a Marriage void, for that the End of Marriage is thereby frustrated. Frigidity is a perpetual Inability to generation. The civil Law requires three Years Cohabitation for the Trial of it before any Proof is allowed; unless it plainly appear by the Oath of Physicians, and inspection of the Party, that the Disability is not accidental, but natural and incurable. The Law of England presumes impotentiam coeundi in viro, from three Years Cohabitation after Marriage sine copula, whether his Disability proceed from a natural Defect, or other Accident before the Marriage: as was resolved in a Cause of Nullity of Marriage in the Reign of King James the Sixth of Scotland and first of England, between the Earl of Essex and his Lady by Reason of his Frigidity in Respect to her; tho the Earl alledged, that he was not frigidus as to any other Woman. A Woman is said to be impotent, either upon the Account of her natural Sterility, or quia nimis arcta or otherwise non apta to have Children. But old Age or any Cause of Frigidity or Impotency, or Bar to Generation, arising to either of the Partys after Marriage will not suffice to annull it. If Persons be lawfully married, tho the Man be naturally frigid or hath been castrated before the Marriage, that Deference is paid to the Marriage, that it is not competent to the Heir, or any other Person concerned in Point of Interest, to question the Marriage as null or dirimendum; if the