

her conjunct Fee, and every thing else which she could have had Right to by the Death of her Husband, Spotswood *ibid.* Stair *ibid.* § 20. McKenzie *ibid.* This is in the Construction of Law as to her civilly Dead. But a voluntary Separation of Man and Wife by mutual Consent, hath no such Effect: and all Deeds depending thereon, whereby Monies are provided to a Wife by her Husband, are ineffectual and null whenever drawn in Question 11 Feb. 1684 *Arumeno contra Captain Rollock*: By the Law of England if a Woman elope from her Husband i.e. willingly leave him and live with an Adulterer, she loseth her Dower of the Husband's Lands 13 Edw. 1. cap. 34 and cannot have Alimony from him: Which Dower she recovers Right to if the Husband after such Elopement be reconciled to her and suffer her to dwell with him d. cap 39 conform to these old Verfes:

*Sponte vidum mulier fugiens et adultera facta,
dote sua careat, nisi sponso sponte retracta.*

vid. Appendix pag. 139.
It hath been much controverted by Casuists, Divines and Lawyers, whether the Partys legally divorced may be married again to others. Some, as Selden, Grocius, Amosius, Dr. Hammond, Dr. Taylor, Bishop Hall and Dr. Fulth, are for second Marriages after Divorce Which Opinions are founded not only upon the Definition our Saviour made of Marriage that we should be one Flesh Matth. 19. 5. 6. The dividing whereof makes them to be any longer one, and the Doctrine of the Apostle 1 Cor. 7. 15. and of the primitive Fathers: but also fortified by the conveniences that attend the forbidding of Marriage after Divorce, as there might be Danger of poisoning one another, and the Partys kept altogether from marrying, might be tempted to gratifie their Lust in a sinful Manner: Besides, we have Examples not a few of such Marriages in Henry 4 of France Henry 8 of England, L. Mountjoy, L. Rich, Bishop Thornborough and the Marquis of Northampton 5 Edw. 6. and divers others. Dr. Keight, Mr. Binny Dr. Priscaux, the Council of Trent and those of the Church of Rome, are against second Marriages after Divorce. For whose Opinion it hath been objected, 1^o That Divorce does not hinder the Partys to be reconciled again in which Case, if the Bond were utterly dissolved, they could not lawfully cohabite, without being married over again: To which it is answered, that no such Consequence is necessary, more than it is necessary to rebaptize one who hath broken the sacramental Covenant of Baptism, or to reordain a Priest apostatizing to Mahometanism who upon true Repentance may be received into God's Favour, and into the Bosom of the Church, by Virtue of the first Covenant or Ordination, &c. Whosoever shall put away his Wife and marry another committeth Adultery and whosoever marryeth her ^{who} is put away committeth Adultery Matth. 19. Luke 16. 18. Which general Texts are indefinitely against Marriage after any Manner of Divorce. It is answered, where an inspired Writer speaks a thing fully in one Place, and not so fully in another that must be expounded by the Place which

is most full: therefore these Texts are to be cleared from Matth. 19. 9. Those whom Sir George McKenzie (Inst. lib. 1. tit. 6. § 17) follows, think that the Party injured or innocent may marry again, but that the Person guilty cannot. Others whom the Lord Stair (Inst. lib. 1. tit. 4. § 7) joins with, are of Opinion that Divorce works a Dissolution of Marriage so, as even the Person guilty may marry to another.

Marriage betwixt one divorced for his own Adultery, and the Person with whom it was committed, is in lawfull and null, and their Issue incapable to succeed to them Act 20. Par. 18. J. 6. Which is agreeable to the civil Law L. 13. f. de his qui ut indig. The Reason why it is so cautioned, is partly as a Punishment of the Adultery committed, by lessning and narrowing their Choice of Heirs; partly to discourage any from committing Adultery, in Expectation of Heirs; as is so ordinary, of enjoying in a future Marriage the Persons with whom they offended, to make Way for which unlawful Enjoyment, they might probably be tempted to kill the lawfull Husband or Wife of the adulterous Person: But this holds only in the Case of a Divorce for Adultery before Marriages for a Marriage cannot be dissolved by offering to prove, that the married Persons had committed Adultery together during their former Marriage if no Divorce actually followed upon it: McKenzie *ibid.* part 1. tit. 17. § 10. The Lord Stair (Inst. lib. 1. tit. 4. § 7) thinks that the civil Law declares Marriage betwixt an Adulterer or Adulteress divorced for his or her Crime, and the Party with whom it was committed, to be void as to Succession and other civil Effects, it cannot simply annul it: And the canon Law allows such a Marriage upon certain Conditions c. 2. & 5. caus. 31. quest. 1. et lot. tit. 2. de ca qui ducuntur in matrimonium pollutum per adult. Nor can a Woman divorced for Adultery, marrying the Man with whom she offended, or haunting his Company at Bed and Board, dispose her Lands, or set Facks thereof to him, or to the spurious Issue betwixt them, or to any other Person in Prejudice of those, who otherwise would have succeeded as Heirs to her Act 17. Par. 12. § 6. No not in Prejudice of the Sovereign, as ultimus haeres: since the last Heir is in the Construction of Law a true Heir McKenzie *ibid.* tit. 17. in fin. Sir George McKenzie (*ibid.*) holds that a Man divorced for his Adultery is not under this Check, which is restricted to a Woman in such Circumstances, because of the Implicability of her Sex, who may be tempted or seduced more easily than men can be. And yet the Lords refused to sustain Action upon a Bond granted by a married Man, to a Woman he had committed Adultery with for the Provision of a Child procreated betwixt them 20 July 1692. Weir of Blackwood contra Durham. Deeds done by such a Woman not only in Favour of her adulterous Husband and the Children procreated betwixt them in that pretended Marriage, but also in Favour of any Stranger to the Prejudice of her own lawfull Heirs are annulled: to prevent the transmitting her Estate to that unlawful Husband, or to his Posterity or Friends under borrowed Names which could hardly be discovered McKenzie *ibid.* For the same Reason, a personal Bond granted by her in Order