

' THE LORDS remitted to the Lord Ordinary, to remit to the Commissaries, with an instruction to allow the defender to repeat a counter process of recrimination in the process of divorce, and to allow a proof before answer; but under this qualification, That stating the defender's recrimination, in the shape of a counter-action, should not prevent her from pleading the pursuer's guilt, when proved, as a total bar to his obtaining a decree of divorce, nor him from pleading his answers thereto.'

No 13.

Lord Ordinary, *Justice-Clerk.* *Act. Maclaurin.* *Alt. Dean of Faculty.*
Stewart. *Fol. Dic. v. 3. p. 19.* *Fac. Col. No 332. p. 510.*

* * * Compare the following case from Balfour, with the above.

1561. *March 26.* *BARBARA LOGAN against ROGER WOD.*

THE husband has just action and cause of seeking partising and divorcement, gif his wife committis adulterie, be committing the use of her body, to ony other man, induring the time of the marriage. Bot the husband may not part with his wife, or seek to be divorcit fra hir, be resfoun of adulterie committed be hir, gif he in likewise, hes given the use of his bodie to ony uther in adulterie, and efter the committing thereof, na wayis was reconcilit to his wife thereanent.

Balfour, (MARRIAGE) p. 99.

No 14.
Effect of re-
crimination.

* * * Compare the following with Nos 9. and 11.

1540. *December 18.* *JANET AUGHINLECH against JAMES STEWART.*

QUHEN ony man and his wife are *simpliciter* partit and divorcit be the authority of the Judge Ordinar, for adulterie, or ony other trespass committed be the man, the hail tocher-gude, and all that was ressavit be the man fra the woman, by vertue of the matrimonie contractit betwix thame, aucht to be restorit to the woman, with the proffits thairof, efter the giving of the sentence of divorce betwix thame.

Balfour, (MARRIAGE) p. 99.

No 15.
Ought the
tocher to be
restored?

See *PIRIE against LUNAN*, 8th March 1796, *Fac. Col. No 210. p. 496.* under the Title *Forum Competens* in this Dictionary; where it was found, That an action of divorce might be pursued before the Commissaries, although both parties resided in England, they being natives of Scotland, and having been domiciled there, at the time of their marriage.