

*probatio probata* of the breaking even of houses or of the theft, *me quidem renitente*. The President thought that it would be *probatio probata* against the party himself, but not against the creditors. But the other Lords did not seem to be of that opinion. However, they agreed that the interlocutor should be so expressed, that it is not *probatio probata* against the creditors, because that is the case before us; and having examined the particular testimonies, found they are not sufficient evidence of the fact.

No. 6. 1740, July 24. LEITH of Leithhall *against* GORDON.

See Note of No. 5, *voce* COMPENSATION.

No. 7. 1747, June 19. MRS KENNEDY *against* MRS JEAN CAMPBELL.

IN this most extraordinary case of the deceased Carrick's two marriages, we all agreed that Mrs Campbell having without challenge lived 20 years with Carrick as man and wife, and even owned as such by Mrs Kennedy; that Mrs Campbell has all the civil rights of a lawful wife and her children of lawful children; therefore we altered Arniston's interlocutor, and remitted with an instruction to allow Mrs Kennedy no proof, *rexit*. Arniston and President, because Mrs Kennedy might yet be prosecuted for adultery, and might suffer in her character which this might prevent; but reversed in Parliament 6th February 1749, and even given up by Mr Erskine Lady Carrick's counsel as untenable, as Mr Al. Ross her solicitor wrote. How different are the opinions of men in this mortal state!—28th July 1747.

In the case marked 28th July 1747, betwixt Mrs Jean Campbell, relict of Mr John Campbell of Mamore, and Mrs Magdalen Cochrane, relict of Kennedy, who pursued a declarator of her marriage with Captain Campbell of Carrick prior to Mrs Jean Campbell's marriage with him, Mrs Kennedy having appealed our judgment was of consent reversed 6th February 1749, and the Commissaries interlocutor allowing a proof before answer affirmed. That proof was accordingly brought on both sides, and the Commissaries found the defenders overt cohabitation with Carrick as man and wife from the beginning of 1726 till he went abroad in 1743 proven, and found the pursuer's prior marriage libelled not proven, dismissed her process, and found the facts proved by Mrs Jean Campbell relevant to infer marriage. The pursuer offered a bill of advocation, which with the answers was reported by Murkle, and the cause heard at the Bar two days, and we unanimously refused the bill. The President was not with us at advising, but was of opinion that the pursuer had not proved her marriage. She produced an acknowledgment of marriage holograph of Carrick dated 3d July 1724, but mentioned neither minister nor witnesses to the marriage, nor was the writing witnessed, but she brought a proof by two different witnesses but far from being unexceptionable of their having seen it before the time that the defender said she was married, viz. 9th December 1725, and also proved familiarities between them, such as Carrick's being secretly conveyed to her bed-chamber at midnight, and sometimes being with her all night. But there were many and violent presumptions against her.—19th June 1751.