

No 584. riage; and indeed the defender possessed sufficient evidence of the pursuer's consent, by letters which he has declined to produce.

*Observed on the Bench*: This question does not relate to a promise of marriage, nor to any distinction of antecedent or subsequent *copula*. The letter contains an explicit declaration or acknowledgment of marriage; and as there appears nothing to set it aside, it must be received as undoubted evidence; nor is it of any consequence, that it does not express mutual consent.

The Commissaries had found the marriage proved; the Lord Ordinary had refused a bill of advocation complaining of that judgment; and

“THE LORDS adhered to the interlocutor of the Lord Ordinary.”

Lord Ordinary, *Gardenston*. Act. *Rae, Buchan-Hepburn, B. W. Macleod, Macnochie.*  
Att. *Ilay Campbell, Hay*. Clerk, *Orme*.

S. *Fol. Dic. v. 4. p. 170. Fac. Col. No. 46. p. 32.*

\* \* \* This case was appealed:

THE HOUSE OF LORDS, 25th June 1782, pronounced the following judgment: “It is declared, That the written acknowledgment is not sufficient proof of any marriage or matrimonial contract having passed between the pursuer and defender; and it is therefore Ordered and Adjudged, That the interlocutors complained of be reversed, and that the Court of Session do remit the cause to the Commissaries, with directions to find, that the said written acknowledgment is not sufficient proof of any marriage or matrimonial contract having passed between the pursuer and defender, and to proceed accordingly.”

1785. November 18. JEAN WHITE against WILLIAM HEPBURN.

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WILLIAM HEPBURN and Jean White, both young persons of middling rank, having contracted an intimacy with each other, the consequence was, the birth of a child. His having had that intercourse was not denied by Hepburn; and it was proved by witnesses, that while Jean White was with child, he said to different persons, “that he was married to her, or that she was his wife;” caused proclamation of banns to be made between him and her; and entered with her father on a treaty of marriage. But there was no evidence of any such treaty, or of a promise of marriage, prior to *copula*, and but a very slight proof that any courtship had then taken place.

The Commissaries “found facts, circumstances, and qualifications proved, relevant to infer marriage betwixt the pursuer and defender.” This sentence was brought under review by advocation; and,

“THE LORD ORDINARY having reported the cause, upon informations to the Lords, refused the bill, and remitted the cause to the Commissaries, with this instruction, that they alter their interlocutor, finding facts, circumstances, and

qualifications proved, relevant to infer marriage between the parties, and assoilzie the defender."

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Reporter, Lord Brunsfield.

Act. Honyman.

Alt. Rolland, Mat. Ross.

Clerk, Home.

S.

Fol. Dic. v. 4. p. 170. Fac. Col. No 235. p. 364.

1786. February 16. PATRICK TAYLOR against AGNES KELLO.

AGNES KELLO, the daughter of a farmer, and possessed of a considerable fortune for one of her rank, received the addresses of Taylor, a person of equal condition, but who, by extravagance, had reduced himself to bankruptcy, and was unacceptable to her relations.

Having drawn up the following writing, he gave it to her, who made a copy of it, which she subscribed thus: "Skirling Mill, February 16. 1779. I hereby solemnly declare you, Patrick Taylor, in Birkenshaw, my just and lawful husband; and remain your affectionate wife, Agnes Kello." This written declaration she delivered to him, and received from him another, *mutatis mutandis*, in the same terms.

Taylor afterwards continued, as formerly, to visit Agnes Kello at her mother's house; but there was no sufficient evidence of *concupitus*; though it has been since affirmed by the former, notwithstanding the denial of the latter. In the meanwhile, he employed the intercession of some of his relations to urge the mother's consent to a regular celebration of marriage, which was then without effect. The above writing, however, he kept secret from every one, even from those confidential persons themselves; nor was it ever heard of till the mother happened to discover the transcript of it, that was in her daughter's possession, when it was immediately destroyed. The latter then wrote to Taylor, requiring him to restore that copy which she had given to him.

He refused to comply with this demand; but his visits were still repeated: and in spring 1780, proclamation of bans between him and Agnes Kello was at length consented to, and twice made; but, before the third time, it was stopped by her or her relations. For two years after this period, their meetings had become very unfrequent; and from 1782 to 1784, these ceased altogether, inso-much that they had not seen each other during twenty-one months.

In the last-mentioned year, Agnes Kello was about to be married to another person, when Taylor instituted against her an action of declarator of marriage.

The Commissaries pronounced the following sentence: "In respect it appears that the defender, when arrived at an age when, by the law of Scotland, she was deemed capable of consent, voluntarily and deliberately granted to the pursuer the declaration libelled on, and received from him a counter-declaration, of the same import; find the mutual obligations relevant to infer marriage between the parties; and find them married persons accordingly."

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Two parties exchanged missives, declaring each other to be man and wife. There was no evidence of *concupitus*. Subsequent to the missives, steps were taken towards a public celebration, which were never carried into effect. Found there was no marriage.