

* * This case was appealed :

No 586.

THE HOUSE OF LORDS, 16th February 1787, pronounced the following judgment:—" It is DECLARED, That the two letters insisted upon in this process, signed by the parties respectively, and mutually exchanged, were not intended by either, or understood by the other, as a final agreement; nor was it so intended or understood, that they had thereby contracted the state of matrimony, or the relation of husband and wife, from the date thereof; on the contrary, it was expressly agreed that the same should be delivered up, if the purpose they were calculated to serve proving unattainable, such delivery should be demanded; which last-mentioned agreement is farther proved by the whole and uniform subsequent conduct of both parties; 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 instructions to assoilzie from the declarator of marriage."

1786. March 3. HELEN INGLIS *against* ALEXANDER ROBERTSON.

MR ROBERTSON, a merchant of some consideration, was sued in an action of declarator of marriage, by Helen Inglis, a servant girl, with whom he had formed a connection. He had taken her from her service, put her to school, and maintained her during an intercourse that subsisted uninterrupted for fourteen years.

In that time he addressed many letters to her, under the appellation of his dear wife, subscribing himself her loving husband; made her presents of a gold watch, gold rings, his father's and mother's miniature pictures, and other such like articles; was frequently seen to behave towards her with the affectionate and respectful manner of a husband; and, on one occasion, when in company with him, she was drunk to as his wife, he seemed to assent to that mode of address.

On the other hand, it did not appear from the evidence, that they were considered by those around them to cohabit as husband and wife; while it was proved, that she, at different times, towards the close of their correspondence, with solemn imprecations, declared that she had never had any carnal communication with him; and, in particular, that she did so to a clergyman, previously to her being admitted to the sacrament.

In an action of declarator, which was instituted by Helen Inglis upon Robertson's entering into another marriage, and in his defence, against which he did not deny *concubitus*,

No 587.

Continued presumed cohabitation of a man and his servant, letters addressed to her under the appellation of his wife, and valuable presents given to her by him, with some other circumstances, found to constitute a marriage.

No 587.

The Commissaries pronounced this sentence, " Finds facts, circumstances, and qualifications proved, relevant to infer a marriage between the pursuer and defender."

On a bill of advocation being presented by the defender, the Lord Ordinary took the cause to report; when it was

Observed on the Bench, The defect in the proof of cohabitation in this case, proceeds in some measure from the witnesses ascribing the intercourse between the parties, to a cause suggested by the disparity of their rank. That defect is therefore to be supplied by other circumstances, such as the so frequent writing of letters by the defender to the pursuer, his making presents to her of valuable family articles, and his assent to the address made to her on the occasion mentioned above.

The Court considered the cause as attended with considerable difficulty; but, in general, the letters seemed to be viewed as furnishing evidence of the marriage.

THE LORDS refused the bill of advocation.

Reporter, *Lord Gardenston.*

Act. *Rolland.*

Alt. *Maconochie.*

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Fol. Dic. v. 4. p. 171. Fac. Col. No 262. p. 400.

* * * This case having been appealed, the HOUSE of LORDS, 14th February 1787, ORDERED and ADJUDGED, " That the appeal be dismissed, and the interlocutors complained of be affirmed."

1795. November 13.

JEAN ANDERSON, and her Children, *against* JOHN FULLERTON and Others.

No 588.

A holograph letter, discovered in a gentleman's repositories at his death, in which he declared himself the husband of his housekeeper, who had long cohabited with, and born children to him, found not to be sufficient evidence of marriage.

JEAN ANDERSON lived with Mr George Fullerton many years as his housekeeper. During that period she bore children to him, some of whom survived him. The children and their mother were treated by Mr Fullerton with much kindness and affection. The latter had the complete direction of his family; sat in the room, and at table with him, even when there were strangers present, and occasionally rode out in the carriage along with him; but she uniformly went by the name of Mrs Anderson. The children not only received the same marks of attention with their mother, but were allowed to assume their father's name, and sometimes visited along with him.

Mr Fullerton was taken suddenly ill, and became insensible on the 19th April 1791, and died on the morning of the 21st. His repositories were immediately sealed up. The keys were left with Mrs Anderson, who had had possession of them during Mr Fullerton's illness, and one of the servants observed her open his desk in the course of it.

In the interval between his being taken ill, and the opening of his repositories after the funeral, Mrs Anderson mentioned to several of her friends, that