Lord DEAS—Do they ever celebrate marriages in presence of one witness?

The SOLICITOR-GENERAL—I am not aware that they do. If they do, nothing is to be said as to the probability of the truth of the letter on that head; if they do not, that is an additional circumstance against it.

Lord DEAS—I do not think the fact proves much.

The SOLICITOR-GENERAL said he did not think it did; but she said that she applied to the minister of the church, who told her that his predecessor kept no register. He much more than doubted that. He thought the answer she must have got would be that the register was the register of banns, which she did not apply for. They had searched the registers both in Edinburgh and Glasgow, and there was no such proclamation registered there. He had in the course of his remarks answered the question put by Lord Deas to Mr Clark, as a matter deserving of consideration—namely, where you have parties living together at a time when there is an impediment to marriage between them, and thereafter seek to establish marriage between them in respect of cohabitation, by proof of that cohabitation, and habit and repute, to what time are you to refer the fact of the marriage? He thought that must depend on the facts of each particular case; and what he submitted as a legal proposition on the subject was that the existence of an impediment at one time during a certain limited period was no obstacle to the proof in a satisfactory way—and proof of cohabitation and repute was a satisfactory way—that the parties were married after the impediments ceased, and they were free. It was a mere question of evidence, without any positive rule of law on the subject that he knew of. Of course, while the impediment existed there could be no marriage; after the impediment ceased, it was a question of fact whether they married or not. The proof of cohabitation as man and wife—the proof of repute of that cohabitation—may or may not be conclusive, just as it is considered sufficient in the mind of the Judge considering it. His mind would be influenced more or less, according to circumstances, by the nature of the intercourse between the parties when there was an impediment. He had considered that matter in connection with the present case, and if the result of the evidence as to the cohabitation and conduct of the parties at the time that they were free to marry were such as to convince the Judge in point of fact that they both intended, that they both consented, and regarded each other as husband and wife, there was no rule of law that he was aware of to prevent the Judge pronouncing according to the evidence that which was his conviction.

Lord DEAS—We have no case as yet in which the law has been so applied.

The SOLICITOR-GENERAL.—I am not aware of any case resembling the present in many of its features.

Lord DEAS—The difficulty in my mind is this—Assuming for a moment that the *onus* is thrown upon you to prove marriage, you attempt to prove that in two ways; one is by habit and repute, the other is by declarations of different kinds; and in any case marriage might be lawful at any time, but here there was a time when marriage could not be lawful. The difficulty is, whether the presumption in such cases be applicable to a case in which there was a date when marriage would be illegal.

The SOLICITOR-GENERAL—That is a question not regarding admissibility, but sufficiency, of evidence. I exclude any presumption applicable to the period when the impediment existed. I start with the question, Did the parties marry or not when they were free to marry? and what I propound to the Court for their judgment, in the view of the *onus* being on me, is—Did these parties marry subsequently to January 1784? I concede that they could not marry before, but I hold that there was then no legal impediment, and that the evidence leads me to the conclusion that marriage then took place.

The Court then took the case to avizandum.

Wednesday, Nov. 1.

SECOND DIVISION.
EXTENDED SITTINGS.

AITKEN *v.* THE REV. DR KING, ETC.

The pursuer of this action is the collector of the arrears of the annuity tax or assessment for the city of Edinburgh. The defenders called are Dr King, as Moderator of the Synod of the United Presbyterian Church, and as an individual; the Rev. Mr Beckett, of Rutherglen, as clerk of the said Synod, and as an individual; and five other gentlemen who are called as the Synod-house Committee, appointed by the Synod, and also as individuals. The ground of action is the liability of the defenders to pay annuity tax due by them for the premises, No. 5 Queen Street, Edinburgh. To a previous action at the instance of the pursuer "against the trustees nominated and appointed by the body of ministers and elders for the time being constituting the United Associate Synod of the denomination of Christians known by the name of the Secession Church, in Synod assembled, at a meeting held at Edinburgh the 14th of May 1846," the defenders pleaded that in point of fact they had not occupied the premises, and were therefore entitled to *absolvitor;* that they were not liable in the sums concluded for, in respect they had not been assessed or included in the stent-rolls made up prior to the passing of the Lands Valuation Act; and that being mere trustees of the title to the subjects mentioned in the summons, they were not liable as individuals. In the first action the Lord Ordinary (Jerviswoode) held that the defenders, as trustees acting under the trust above set forth, must be held under their feudal title to have been in the occupation of the subjects for the periods to which the action relates, and found them liable in the assessment. The defenders reclaimed. Before judgment they put in a minute to the effect that the premises in question have been occupied by the Synod of the United Presbyterian Church; that the present representatives of the Synod are Dr King as moderator and Mr Beckett as clerk of the Synod; and that the management of the premises has been committed by the Synod to the gentlemen of the Synod-house Committee. At the discussion to-day on the whole case it was pleaded for the defenders that the pursuer had not validly called the occupants of the premises in question, who were, in terms of the minute which they had lodged, the Synod of the United Presbyterian Church, and certain gentlemen as representing the Synod; and further, that the claim was cut off by the quinquennial prescription applicable to ministers' stipend. At the conclusion of the arguments, the Court made avizandum with the case, and with another of a similar nature.

Thursday, Nov. 2.

ADVN.—MURPHY *v.* M'KEAND.

Counsel for the Advocator—Mr Mair. Agent—Mr William Officer, S.S.C.

A point of practice was decided in this case, which is an advocation from the Sheriff Court of Kirkcudbright. On the motion of the advocator the case had been reported to the Inner House, where the record was closed, and it was not therefore an advocation in absence. On the case being called to-day no appearance was made for the respondent either by counsel or agent, and the counsel for the advocator moved for decree in respect of the non-appearance. The Court did not consider that the case could be so disposed of, and appointed special intimation of the fact of the dependence of the case in the roll, and of the non-appearance for the party to be made to the respondent.