This was an appeal against a judgment of the Sheriff of Inverness-shire, refusing a motion made by the appellant for an adjournment of a diet of proof. The reason urged for the adjournment was that the appellant (who was the defender in the action) had been entitled to expect the attendance of the pursuer at the diet of proof, and had therefore not cited him, and that the pursuer had not appeared at the diet. The Sheriff-substitute found that the reason assigned was no reason, and the Sheriff adhered. The appellant now brought the present appeal, and craved to be allowed further proof under the 72d section of the recent Act.

STRACHAN for him.

KERR in answer.

The Court dismissed the appeal, holding that no case had been made out for the allowance of proof asked.

Agent for Appellant—James Barclay, S.S.C.

Agents for Respondent—Murdoch, Boyd & Co., S.S.C.

Thursday, December 16.

ROBERTSON *v.* DUKE OF ATHOLE.

Contingency—Proof—31 *and* 32 *Vict., c.* 100, *sec.* 72 *—Appeal.* (1) Motion to remit an appeal to the First Division, on the ground of contingency, refused in respect of no contingency; (2) Circumstances in which, after final judgment, party allowed to lead proof in terms of the power conferred by sec. 72 of the Court of Session (Scotland) Act 1868.

This was another appeal from the Sheriff-court of Perthshire, brought by Mr Robertson, Dundonnachie. The proceedings in the Court below originated in a petition presented by the Duke of Athole, craving the Sheriff to ordain the appellant instantly to restore the turnpike gate at Dunkeld Bridge, which he had violently thrown down, and to interdict the appellant from unlawfully entering upon or destroying any part of the bridge, &c. To this petition the appellant entered appearance in the usual form; but at the first calling in Court he appeared personally, and stated that he declined to state any defence. The Sheriff-substitute thereupon held him as confessed, and granted decree in terms of the petition, and thereafter allowed the petitioner to restore the gate at the appellant's expense.

The appellant thereupon brought the present appeal.

SCOTT for appellant.

SOLICITOR-GENERAL and LEE in answer.

The appellant contended, in the first place, that this appeal should be remitted to the First Division, where the declarator as to the Duke's right to levy pontage at the bridge was now pending. This motion the Court refused, as the affirmance of the contention of the public in that case by no means involved that the appellant was right in this case. The appellant then moved to be allowed to state his defences on the merits now, and in this Court. This the Court, in the peculiar circumstances of the case, allowed, holding that they had power to do so under the 72d section of the recent Court of Session Act, The appellant was, however, found liable in the whole expenses, both in this Court and the Court below, since the date of the interlocutor holding him confessed in respect of his declinature to lodge defences, and payment of the inferior court costs was declared to be a condition precedent of the proof allowed.

Agents for the Appellant—Lindsay & Paterson, W.S.

Agents for the Respondent—Tods, Murray, & Jameson, W.S.

Friday, December 17.

FIRST DIVISION.

MORRISON *v.* DOBSON.

Marriage—Consent—Promise sub. cop. A for some years courted B with a view to marriage, and lent her a sum of money. Connection took place between the parties, and on the faith of it, and a supposed interchange of consent, A spoke of B as his wife. She however repudiated the relationship, and denied it to several parties. Some time later, being pressed by A to return the money, she refused to do so, and claimed to be his wife. This he now denied. *Held* there was no marriage, as the *copula* was not conceded by B on the faith of A's promise to marry her, though his promise was held proved.

This was an action of declarator of marriage brought by Isabella Morrison, to have it found and declared that, either by deduction *de præsenti*, or by promise *subsequente copula*, she had become the wife of Thomas Dobson, lately supervisor in the Inland Revenue at Leith. Both parties belong to the Methodist persuasion, and in his capacity as a collector in connection with the chapel the parties became acquainted in 1863. Dobson formed an attachment to her, and repeatedly solicited the pursuer to become his wife. She alleged that eventually she agreed to marry him, but that he insisted the marriage should be kept private; that on the 4th or 5th of July 1864, in the house of her brother-in-law, with whom she resided, the two parties solemnly acknowledged each other as husband and wife, and that on the faith of it intercourse took place that night. He however alleged that there was no such declaration made, and that the intercourse took place at her request. He asserted that he had lent her £305, and that, believing the intercourse constituted marriage, he repeatedly, but in vain, claimed her as his wife.

A proof was led, and a great number of letters were lodged in process. It was proved that in the expectation of their marriage he had taken a house, that she had in December 1864 acted as bridesmaid to one of her brother-in-law's servants, and that Mr Blanshard, minister of the chapel they went to, had remonstrated with her on her illicit intercourse with Dobson, had refused her church privileges, and pressed her to return the £305 to Dobson; but that her reply was "that if she had been a young girl of eighteen she might have done it, but that as she was a woman of forty, and a native of Aberdeen into the bargain, it was more than perhaps" Mr Blanshard "ought to expect of her." All Dobson's overtures to her were most scornfully received, and on various occasions she denied that she was his wife. None of the letters were addressed to her as Mrs Dobson, but to Miss Morrison; and she was not called Mrs Dobson by her own relations. In many of the letters he addressed her as his wife, and spoke of their private marriage; but he now contended that this meant only his affianced wife, and that he meant betrothal by

marriage, for elsewhere he spoke of it as their betrothal, and the acknowledgment as a betrothal.

Many of the earlier letters were addressed by the defender to the pursuer as his daughter. There was also several letters, bearing no date, in which the pursuer called her his wife; and in some of these he complained of her flirting with other men, married and unmarried. Her letters at no time reciprocated his warmth, and at this charge she was angry, and returned some of his letters, as she said, unopened. On 8th August 1865 she wrote him the following letter:—

"Sir—As my agent is about to put your letters to me with those sealed by the post-office as coming from a government servant, before the *board* in *London*, in order that they may advise him if he has to deal with their supervisor in Leith as a madman or a blackguard; so if there is anything more you wish to go before them, let me have it at your earlist convenience, that all may go together. I. Morrison.

"*P.S.*—As a woman's character would only be aspersed by a villain, it goes for nothing.

"I. M."

In course of time, however, she pressed for the public performance of the ceremony; but he first spoke of deferring it for a hundred days, and then declared it was unncessary, and offered to receive her into his house.

Mr Dobson had written in a Bible, the words "Thomas Dobson and Isabella Morrison Dobson were married on Tuesday, July 5th 1864." And this had been seen by various people. He had also mentioned to various witnesses the fact of his marriage, but that he wished it kept secret. He also wrote her a description of the house he had engaged for them. He spoke of their marriage as made in the sight of angels; and of his keeping anniversaries of it; and up till the middle of 1868 wrote to her as his wife, and as a husband remonstrated with some parts of her conduct. All along she had denied the marriage; but he having asked for the return of his money, she declined to do so, now alleging that she was his wife. As he now considered no marriage had taken place, he repudiated the relationship. She therefore brought an action of declarator of marriage, either as having been constituted by *de præsenti* interchange of consent, or as being reared up by promise *sub. cop.* Eventually she only persisted in the latter claim.

The Lord Ordinary (Jerviswoode) having found that there was a marriage, the defender reclaimed.

Gifford and Trayner for him.

Lord Advocate and Thoms in answer.

At advising—

Lord Ardmillan—In disposing of the very peculiar case presented to us in this action of declarator of marriage, it is necessary in the outset to ascertain clearly what is the kind of marriage which the pursuer alleges, and by what sort of proof the pursuer now contends that she has instructed her allegations.

There are some statements made on behalf of the pursuer on this record which seem to point at marriage by declaration of mutual consent *per verba de præsenti*. But, after careful consideration of the proof, I am of opinion that there is no sufficient evidence to support the action on this ground. In so far as the pursuer's statements can be construed as amounting to averment of such interchange of present mutual consent, she has entirely failed in the proof.

She alleges that she "agreed to marry the defender," that "she reluctantly agreed to dispense with a public marriage" at his request, that the defender and she "solemnly acknowledged and declared and accepted each other to be husband and wife of each other," that "on every opportunity (since July 1864) the pursuer and defender acted towards each other as husband and wife," and that "the pursuer, in any letters she wrote to the defender, addressed him as husband."

Now not one of these averments has been supported by the proof. Laying aside for the present the one act of connection in July 1864, to be afterwards noticed, it is not proved, and it is not now even suggested, that the pursuer and defender acted towards each other as man and wife. There is no proof that at any time the pursuer agreed to marry, or expressed a willingness to marry, or that she intended to marry, the defender, until she raised this action. On the contrary, her letters to him, corroborated by his letters to her, afford the clearest proof of her great repugnance and opposition to the defender's advances in the way of courtship with a view to marriage. The statement that she in her letters to the defender addressed him as her husband is contrary to the fact. All her letters are signed by her in her maiden name, and they are altogether irreconcilable with the idea of her thinking him to be her husband, or wishing him to become her husband. Accordingly, her case was ultimately maintained, not as a case of marriage by declaration of mutual consent, nor as a case of marriage by anything of the nature of cohabitation as man and wife with habit and repute, but simply upon the ground, given effect to by the Lord Ordinary, of promise *subsequente copula*. Marriage by proof of cohabitation as man and wife and habit and repute is not in this case. It is not even suggested. And as to the marriage by interchange of *de præsenti* consent, it is, as I have said, neither proved nor now insisted in.

There remains only the question whether marriage by promise *subsequente copula* has been instructed? That is truly the only case put before us by the pursuer; and that case required and has received most careful consideration.

The material facts of the case admit of being shortly stated.

The pursuer is now above 40 years of age—the defender Mr Dobson is now above 60. They both resided in or near Leith, and they were both members of a Methodist Congregation in Duke Street, Leith. Their acquaintance became very intimate, and the defender undoubtedly entertained a great regard and affection for the pursuer, and expressed himself very warmly towards her in the correspondence which is in process. That correspondence, commencing in 1862, is marked by several peculiar and important characteristics. In the commencement of it the defender's letters to the pursuer begin with the words "Miss Morrison" and conclude with the words "I am most respectfully yours." About the month of April 1863 the defender changes his style, and commences his letters by addressing the pursuer as his daughter. During that year many of his letters begin "Daughter," others "My Dear Daughter," or "My own and only Daughter," or "My naughty unkind daughter" and generally conclude with "Yours very truly." In none of these letters prior to the month of July 1864, though there may be something of the nature of courtship, have I been able to discover anything like a distinct promise of marriage,

or even any very clear indication of an intention on the part of the defender to marry the pursuer. It certainly is not the fact that in any of these letters the defender expressly proposed or promised marriage. It is the fact, as appearing from the defender's subsequent letters, as now alleged by the pursuer, and as admitted by the defender on the record, that on the 4th or 5th of July 1854 the defender had connection with the pursuer in the house of Mr Duncan in Leith Walk; and undoubtedly the letters of the defender, after that date, are written in a different style and evidently under a different state of feeling. I may remark generally, that the defender's letters are in some instances scarcely coherent, and are characterised by great fluctuation of mind, and, to say the least of it, great eccentricity. It is very unsatisfactory to be called on to declare a marriage—to impose upon the parties the most solemn and abiding contract which can be entered into, and to gather evidence of that contract out of a multitude of letters written in such a rambling, inconsistent, incoherent and eccentric manner as we find in this case. I shall only say that this peculiar state of mind on the part of the defender increases the difficulty of arriving at a safe conclusion in a declarator of marriage.

It can scarcely be doubted that after the 5th of July 1864 the defender considered that what had passed on the occasion of that single act of connection was "a betrothal," an "affiancing," and indeed equivalent to an actual marriage; for he writes to the pursuer calling her his wife, lavishing the fondest epithets of affection on her, subscribing himself "your devoted husband," and addressing his letters to her as "Mrs Morrison Dobson." I do not quote these letters. They are very numerous, and the expressions in them are very tender, enthusiastic, and extravagant. He takes delight in multiplying and intensifying his declarations of devotion to her as her husband.

Now, though there is nothing amounting to an actual promise of marriage in any letter prior to the 5th July 1864, and though there is not in the letters of the defender, even after that date, any distinct acknowledgment of the existence of a promise of marriage prior to the act of connection, I am willing to hold, though not without difficulty, that, construing as a whole the entire course of correspondence, the existence of such prior promise may be gathered from the defender's letters.

But we have now to consider what was the conduct and the language of the pursuer. She did not respond to the defender's advances, nor express her wish or willingness to marry him. Certainly she did not, on any single occasion prior to the raising of this action, claim her position as his wife, or act as if she was his wife, nor in any single letter address him as her husband, or subscribe herself as his wife.

So far as I can see, the first letter after 5th July 1864 bearing to be signed by the pursuer (and which is proved to have been written by her sister, with her knowledge and consent) is one dated "3 King's Place, Tuesday," with the post mark July 12, 1864. It is of little consequence. It bears no reference to what had occurred. It begins "My dear Mr Dobson," and concludes "I am, dear sir, yours truly, J. Morrison." Her next letter, dated 20th July 1864, commences "Sir," and proceeds thus:—"Your last insulting note I received this morning. I merely write to say you may save yourself the trouble of sending me any more, as I'll either burn or return them unopened,"—(signed) "J. Morrison." The next letter is dated 24th April 1865, and is to the following effect:—"Mr Dobson may save himself the trouble of calling to-morrow afternoon at 3 King's Place, Leith Walk." Another letter, dated 20th July 1865, is in these terms:—"Sir,—As you declined showing your certificate, or pledge as you now term it, to my brother-in-law, I demand you show it to Mr Anderson, as you wrote to him a line from me to this effect would do it. If this does not produce it, I at once resort to other means, that I may be in a position to defend myself,"—(signed) "J. Morrison." The "certificate" which the pursuer here meant, and which the defender more than once refers to in an excited and scarcely coherent manner, as a "certificate of unity for life," in the "house of the betrothal," was not a writing of any kind, but a piece of the pursuer's underclothing which he states that he carried off on the night of the 5th of July and afterwards destroyed.

Notwithstanding the marked repugnance to the defender's addresses evinced by the pursuer, it appears that the defender continued for above two years more to cherish the idea that the connection on the 5th July was equivalent to a marriage. His letters afford ample proof of the extravagance of his affection, and the fidelity of his adherence to that view of his position.

On the other hand, the pursuer, although she perfectly understood his persevering allegations of a marriage between them by promise *subsequente copula*, repeatedly stated that she was not married to the defender. She denied that she was married to him to Mr Dear, to Mrs Maconochie, to Mr Grant the superintendent of police, and most especially to the Rev. Mr Blanshard, whose conversation with her in regard to her conduct with the defender was such as must have led her to declare that she was married if she had thought or intended it so to be. Then in December 1864 the pursuer attended the marriage of Mrs Ross, and acted as a bridesmaid, and signed her name as witness to the marriage "Isabella Morrison;" and on that occasion she stated distinctly to Mrs Ross that she would never marry Mr Dobson. This was four months after the day when the pursuer now alleges that she was married.

Thus the result of my examination of the correspondence, of which it is unnecessary to refer to in detail, is, (1) that there was no written promise prior to the connection; but that the existence of a promise prior to the connection may be inferred from the whole course of the defender's letters to the pursuer. (2) That neither before nor after the 5th of July 1864 is there any evidence of the pursuer's willingness to have married the defender. On the contrary, there is proof of her repugnance and aversion to such marriage; and proof that she denied that she was married, and acted as if she was an unmarried woman. (3) That after the 5th July 1864 the defender held strongly and enthusiastically the notion that the connection on that day had been a betrothal, and that it was, to his heart and feelings, and in his estimate of its validity, equivalent to a private marriage; but that during the whole of this period of upwards of two years, extending down to the beginning of September 1868, the pursuer never responded to his expressions of attachment, or expressed a wish or willingness to marry him, and still less a belief that she was married.

In these circumstances, the pursuer's present de-

mand for declarator of marriage, looking to her whole previous language and conduct, would be not only amazing, but quite without any intelligible explanation, if it were not for the circumstance to which I now advert.

It appears that the defender handed to the pursuer a sum of upwards of £300 about the end of 1863. He says on the record that he gave it to her with a view to marriage, and in order that she might supply herself with clothing, and thereafter provide furniture for a house. On the other hand, the pursuer told the Rev. Mr Blanshard that that sum "had been given to her as a daughter." Now, whatever was the footing on which the sum was given, it is certain that the pursuer denied that she either received it or retained it with a view to marriage. It has never been returned to the defender. As long as no demand was made for it, no attempt was made by the pursuer to claim the position of the defender's wife; but no sooner was repayment of this sum demanded than this action of declarator of marriage was raised. This is the only explanation which suggests itself of the extraordinary change which has taken place in the pursuer's views and intentions. After years of patient endurance of the suspense and unhappiness of unsettled relations towards one who received his affectionate advances in a spirit colder than indifference, and more hostile than repugnance, the defender had abandoned the fond imaginations of marriage which he had so long cherished. But he thought he was entitled to his money, and desired its restoration. Then the woman who had spurned him, and almost driven him frantic by her treatment, suddenly changes her mind, and meets his claim for the money by an action of declarator of marriage!

If it be said that, in the application of the law of marriage, the Court is under the necessity of finding these two persons to have been united by the sacred ties of marriage in 1864, it must at least be admitted that the circumstances to which it is proposed to apply the law are in this case very unusual and unfavourable. It is therefore especially necessary to consider carefully the import and bearing of the principles of our marriage law on the facts of this very singular case.

I have already explained that the only case presented to us is one of alleged marriage by promise *subsequente copula*. It is in regard to that case that we are called on to consider the principles of law.

Nothing less than a promise to marry will suffice; and the promise must be legally proved to have been given previous to the *copula*.

The fact of a previous courtship of an honourable kind, and with a view to marriage, although not sufficient in itself, is not without great importance as one of the circumstances by the aid of which we construe written proof of promise. The promise must be proved by the writ or by the oath of the party alleged to have promised. The law does not require a written promise, but it must be proved by writ or oath of party that there had been a promise. The promise may be gathered from many letters in a course of correspondence, and these letters may be read in the light shed on them by the conduct of the parties, and by the surrounding circumstances. But nothing must be left to mere conjecture, and the promise cannot be proved by inference from the circumstances alone. The probability of a promise, or the inference that, under all these circumstances, a promise may have been given, is not sufficient to instruct that promise, which, if followed by connection on the faith of it, may constitute marriage. It is quite right to take all the aid for construction which can be derived from a review of the whole conduct of the parties, and the whole circumstances of the case; but it is now quite settled,—too firmly settled to admit of dispute,—that the promise must be proved by writ or oath of the defender, and proved to have been given of a date prior to the act of connection. It is sufficient to refer on this point to the decisions in the cases of *Monteith* v. *Robb*, 5th March 1844, 6 D. 934; of *M'Kenzie* v. *Stewart*, 5th February 1848, 10 D. 611; *Ross* v. *M'Leod*, 7th June 1861; and *Longworth* v. *Yelverton*, as decided in the House of Lords. If, in point of fact, the will of the woman at the time of the *copula* was not to expect or desire the fulfillment of the promise, then there is no marriage.

It is said that her consent is proved by legal presumption arising from the fact of *copula* following on the promise. It may be so proved. In such cases it frequently is so proved. But I am of opinion that the consent of the woman is not necessarily or universally proved by the presumption created by the fact of connection following after promise. Mere sequence in point of time is not sufficient of itself to create the presumption of consent which the law requires. The *post hoc ergo propter hoc* is not absolutely conclusive. It seems to me impossible to exclude all inquiry into the conduct of the parties and the surrounding circumstances of the connection as instructing the motives, feelings, and intentions which prompted or accompanied the act.

Of course the *copula* may be proved *prout de jure*. In this case connection on one occasion only has been established. That appears from the letters, and is instructed by the judicial admission of the defender.

But in order to the constitution of marriage by promise *subsequente copula*, the *copula* must be conceded by the woman on the faith of the promise. This is the principle or theory of our law on the subject. The relation of the *copula* to the promise must be that of a concession or surrender of person by the woman in reliance that the man's promise of marriage will be fulfilled. In the ordinary case of *copula* following on a promise of marriage, the natural and reasonable presumption is that the woman desired that the man should fulfil his promise, that she relied upon his doing so, and that she yielded her person on the faith of such fulfillment. That is a very natural presumption; and, in the absence of evidence to the contrary, the law accepts the presumption as sufficiently instructing the required relation between the *copula* and the promise. But it is not a *presumptio juris et de jure*. It does not exclude proof to the contrary. I do not mean to say that after the fact of connection following a promise has been proved the woman can be required to prove the motives and intentions under which either party acted. In the absence of all proof to the contrary the law will apply the presumption. But the presumption must yield to the fact if proof be adduced to meet the presumption, and be sufficient to displace and destroy it.

Where there is a specific promise in writing, as a bond or letter given by the man to the woman, and accepted and retained by her, the fact of her so accepting and retaining the written promise is of itself a response to the promise, and the presumption will be that, holding that promise in her

possession, she yielded her person on the faith of it. But that element is awanting when the only evidence of the promise is obtained from the construction put upon letters written by the defender after the date of connection.

I do not think it can be said to be universally true that the connection following a promise has been consented to on the faith of the promise. I could suppose such a case as a man writing a letter to a woman containing a distinct promise of marriage, and the woman replying:—"I do not desire or care for your promise of marriage. Send me £5 and I will receive you to-night;" and £5 is sent to her accordingly. Could it be reasonably maintained that connection following upon that letter, and that reply, constituted marriage? I think not. Suppose another case. A gentleman in the course of an impassioned love-letter, distinctly promises marriage. To this letter the lady, in the more refined but not less licentious sentiment of Eloise, replies:—"I want no promise of marriage, I do not wish to be restrained by such obligations." "No, make me mistress to the man I love."

I am of opinion that connection following upon such a letter and such a reply would not amount to marriage. All relation between the connection and the preceding promise would be disproved, and there would consequently be no room for the presumption that the one had induced the other.

Now applying the principles of law which I have endeavoured to explain to the ascertained facts of the case before us, I have arrived at the conclusion that the pursuer has not established a marriage between her and the defender. Her letters, and her whole conduct, have forced upon me the conviction that she did not mean or wish to marry the defender, that she did not rely on his fulfilment of a promise to marry, that at the time when she yielded her embraces she neither expected nor desired the fulfilment of any such promise, and did not surrender her person on the faith of it. If I am right in this view of the evidence afforded by her own conduct and letters, then there is no marriage.

I have in vain endeavoured to find any expression or indication of an intention to marry the defender in the letters or the conduct of the pursuer down to the beginning of September 1868. I quite admit that if there really was a marriage constituted by promise *subsequente copula* in July 1864, neither of the parties, nor both of them together, could extricate themselves from the relation of husband and wife so constituted. It is with reference to the proceeding which is alleged to constitute marriage that the evidence derived from the whole conduct of the pursuer becomes important, and it is in the application of the evidence to the conduct of the woman on that occasion that I find grounds for the conclusion that the connection was not on the faith of the promise. In two letters written by the pursuer to the defender in September 1868, he demands back the money which in the ardour of his love he had handed to her. Then, but not till then—at the distance of upwards of two years after the *copula*—the pursuer appears to have resolved on claiming the position of the defender's wife; and the answer she made to his letters claiming the money was this action of declarator of marriage brought within a few months. Nor is this all. I have already explained that the pursuer did not in any letter of hers address the defender as her husband. But after she received these two letters from the defender demanding back his money, she then, in October 1868, and while preparing to raise this action, wrote at the end of one of the defender's extravagantly affectionate letters, said to be of date April or May 1866, addressing her as his wife, these words—"I acknowledge Thomas Dobson is my husband" (signed) "Isabella Morrison Dobson." This is the only time she ever subscribed that name, the only time she ever attempted to claim the position of the defender's wife; and this she wrote in the presence of her agent, and in the course of preparing to bring this action. In short, the first thing she did after the defender demanded his money was to attempt to support her claim by writing this acknowledgment; and the next thing she did was to bring her action of declarator and produce that acknowledgment.

On the whole matter, although the case is peculiar in its facts and in some respects important in legal principle, I have been unable to arrive at any other conclusion than that the pursuer has failed to instruct a marriage between her and the defender by promise *snbsequente copula.*

LORD DEAS concurred.

LORD KINLOCH—I have arrived at the same result; and my view may be stated in two or three short sentences. When a marriage is sought to be constituted by a promise of marriage made by a man to a woman *subsequente copula*, I think it clear that it is not necessary that the woman prove a formal acceptance by her of the promise. But I consider it indispensable that she should satisfy the Court that the conduct of the man produced in her mind the will and intention to be married to him; and that she yielded her person to his embraces in the belief and purpose of becoming his wife. In the ordinary case this will be fairly presumable from the *copula* following on the promise. In the present very singular case I think the evidence proves directly the contrary to have taken place; for it satisfies me that at the time of the intercourse, on 5th July 1864, the pursuer did not yield her person to the defender in the belief and purpose of becoming his wife; and that for years afterwards she resisted the defender's proposals to be married, or to hold herself as married to him. She cannot be now permitted to set up the intercourse as effecting a marriage, which her conduct proves she did not at the time intend.

LORD PRESIDENT concurred.

Agents for Pursuer—Lindsay & Paterson, W.S.
Agent for Defender—P. S. Beveridge, S.S.C.

Friday, December 17.

CAMPBELL AND OTHERS *v.* DUKE OF ATHOLE.

Toll-dues—Accounts—Act of Parliament—Borrowing—Bridge—Outlay. The Duke of Athole was authorised by Act of Parliament to erect a bridge across the Tay at Dunkeld, and for that purpose to borrow on the security of the toll-dues. By another clause it was enacted that the sum should not exceed £18,000. The termination of the tolls was provided for; and the Duke was directed "to cause" his accounts to be laid before the Justices of the Peace at their annual meeting. The cost of the bridge exceeding the estimate, he obtained