

1785.

M'INNES
v.
MORE.

“ I therefore move to reverse the interlocutors, and declare that Shawfield is entitled to retain the tack duty, and impute the same ; 1st, In payment of the interest of all his debts ; and then, in payment of the principal thereof in competition with creditors not preferable to any of the said debts.”

It was ordered and adjudged that the interlocutors of 7th December 1780, and 4th February 1785 complained of in the appeal, be reversed. And it is further ordered and adjudged that the appellant, in account with the York Buildings Co. and their postponed creditors, has a liberty to retain and impute the tack duty of £500, in the first place to pay the interest, and, in the second place, the principal of all such debts due to the appellant as are preferable to the debts due to such creditors.

For Appellant, *Ilay Campbell, W. Grant.*

For Respondents, *Ar. Macdonald, Alex. Wight.*

NOTE.—Unreported in Court of Session.

JANET M'INNES, Widow of CAPTAIN FAIR-	}	<i>Appellant ;</i>
BAIRN, late of the Sixty-second Regi-		
ment, - - - -		
ALEX. MORE, - - - -		<i>Respondent.</i>

House of Lords, 23d May 1785.

CONSTITUTION OF MARRIAGE—Held, that though a party joins issue, and goes to proof and final judgment, on one fact of her condescence, that she is not foreclosed, on failure in making out the issue, from going to further proof of the other facts and circumstances of her condescence. So held in a declarator of marriage.

The particulars of this case are reported, *ante* p. 598, Vol. II.

The appellant, in attempting to make out her marriage, grounded her case, both in the libel and subsequent condescence given in for her, on a written acknowledgment, which she alleged was sufficient proof to establish a valid marriage between them ; and the House of Lords having reversed the judgments of the Court of Session, which found such acknowledgment sufficient, and ordered that the Court of Session do remit to the Commissaries to find that such written acknowledgment was not sufficient proof of any

marriage having passed between the parties, the case was remitted accordingly.

When the case came before the Commissaries, an interlocutor, in terms of the judgment of the House of Lords, was then pronounced, whereupon the appellant again, by a reclaiming petition, raised the question, on a new ground of law, insisting that she was entitled to a proof of *all facts and circumstances* tending to support the other grounds of her libel, and that she was prepared to prove and establish a constructive marriage. After some discussion, a condescendence was ordered. The condescendence was given in, but it appearing to be almost entirely founded on the letter already adjudicated upon, the Commissaries rejected the proof offered. On reclaiming petition to the Court, their Lordships allowed her a proof of her condescendence, and in general of all facts and circumstances in support of the libel. In contending for this result, she stated, that as she had been misled by the Commissaries and by the Court of Session, who had decided that the *written acknowledgment was sufficient*, she was restrained from going into a proof of all facts and circumstances constituting a marriage between them in general terms. In answer, the respondent stated, that having been allowed a proof of whatever *facts and circumstances* she thought proper to insist on for establishing this alleged marriage, she was cut off from going into any new proof. The parties had joined issue, and the appellant chose to rest her cause upon the evidence of the letter, together with what appeared from the mutual declarations of the parties. She in effect renounced all other proofs, and agreed that the cause should be determined upon that issue alone. Nothing therefore was omitted *per incuriam*. She stated in substance the facts she now states, and having betaken herself to a certain mode of proof, and waived all further proofs, the question cannot be raised again. Besides, in the civil law, after a party had concluded on taking a proof, he was not on any account allowed any further proofs, as appears from Novel, 115, cap. ii. In Scotland, when an act is once pronounced, whether of *litiscontestation*, or before answer, and a proof closed, the parties cannot be allowed to propone new facts and allegations, which is expressly provided by the Act of Sederunt, 23 July, 1674.

The Court adhered to their former interlocutors.

These interlocutors the appellant brought under appeal to the House of Lords, but their Lordships

1785.

M'INNES
v.
MORE.

Nov. 24, 1783.

Jan. 24, 1784.
Feb. 10, 1785.

1785.

Ordered and adjudged that the appeal be dismissed, and the interlocutors complained of be affirmed.

 YOUNG

r.

BROWN, &c.

For Appellant, *B. W. Macleod, John Mackenzie.*

For Respondent, *Ilay Campbell, Sylv. Douglas.*

ALEX. YOUNG, a Linen Printer,	-	<i>Appellant;</i>
MESSRS. BROWN and Company, Merchants,	}	<i>Respondents.</i>
Glasgow,		

House of Lords, 7th June 1785.

CONTRACT—APPRENTICE.—An apprentice having bound himself to one Company, and his services, on its dissolution, having been transferred to another Company. Held, by the terms of his agreement he was bound to serve the new Company.

The appellant, Alexander Young, by articles of indenture, dated April 1781, engaged himself as apprentice to *Messrs. Macalpine, Fleming, and Company*, merchants in Glasgow, binding himself “to serve the said concern of *Macalpine, Fleming, and Company*, at their printfield of Dalquharn, or the subsisting partners of the said concern, who may carry on the business, or their managers for the time being, &c.

The appellant entered on the duties of his apprenticeship, and continued therein until, as was alleged, the whole partners came to the resolution of dissolving the company, which they did, by a minute signed by them, dated Nov. 1784, in the following terms:—

“ We unanimously resolve, and agree to dissolve the partnership, and it is hereby dissolved accordingly; and we hereby order our affairs with all convenient dispatch, to be brought into as narrow a compass as possible; the goods and effects of the company to be disposed of, and the company’s debts to be paid off with all expedition. And we further resolve that the dissolution shall be advertised in London Gazette, and the Edinburgh and Glasgow Papers.”

After the dissolution of the concern in this manner, some of the partners of the old concern resolved to form a new Company, which was done under the social name of *Messrs. Brown and Company*.