

Ordered and adjudged that the interlocutor complained of be, and the same is hereby affirmed.

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For the Appellant, *Henry Erskine, John Clerk.*

For the Respondents, *Sir Sam. Romilly, Ad. Rolland, Geo. Cranstoun, Tho. Thomson.*

M'ADAM
T.
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[Dow's Reports* et Mor. App. Proof, No. 3. and 4.]

ALEXANDER M'ADAM, Esq., Apparent Heir of Tailzie and Provision to QUINTIN M'ADAM, Esq. of Craigengillan,	}	<i>Appellant;</i>
ELIZABETH WALKER, designing herself Wi- dow of the said QUINTIN M'ADAM, Esq., and Others,		
	}	<i>Respondents.</i>

House of Lords, 21st May 1813.

MARRIAGE—LEGITIMACY—PROOF—INSANITY.—(1.) Circumstances in which a man made marriage with a person then living with him, and who had born him two children, and who was pregnant with a third, by declaring before witnesses, called in to witness the ceremony, that he “took them to witness that this is his lawful married wife, and the children by her, his lawful children;” and this declaration being assented to on the other part, was held as a lawful marriage. (2.) The gentleman having shot himself a few hours thereafter, the plea of insanity was set up against the marriage, but held this was not proved. (3.) It was contended that a marriage, celebrated in this form, was, like a promise, incapable of being proved by parole evidence alone, without some writing or acknowledged solemnity to support it: Held that parole was competent. (4.) In the proof the appellant offered to prove constitutional tendency to insanity in the deceased's family, by offering evidence as to the insanity of his progenitors, but the Court held it incompetent to prove the insanity of M'Adam by such facts. Affirmed in the House of Lords except as to the fourth point.

By deed of entail, the estate of Craigengillan and others had been destined to Quintin M'Adam and other heirs,

* Some cases in Dow are imperfectly reported. These will be reported here, in order to supply omissions.

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“ whom failing, to Alexander M'Adam (the appellant), and
 “ the heirs male of his body.”

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The deceased Quintin M'Adam, it was alleged, had never married, but had several natural children. One, a son, born of Mary M'Whirter; and of his connection, sometime thereafter, with Elizabeth Walker, there were two daughters born before his death, and a son born *after* that event.

Mrs. Elizabeth Walker raised the present declarator of marriage, to have it found and declared that she was lawfully married to Mr. M'Adam, and that her daughters, Catherine and Jane, and the child or children *in utero* of the said Elizabeth Walker, were the lawful children of the said marriage.

Elizabeth Walker had lived with Mr. M'Adam for several years, and at the time (March 1805) when the act she founded on as establishing her marriage was performed, she was then pregnant, and was a few months thereafter delivered of a son. He had frequently expressed not only to herself but to others, that he intended to marry her, in order to render his children legitimate, and his connection with their mother honourable, and this was established by the proof. In pursuance of this resolution he wrote the following letter to his law agent, Mr. Smith, “ Berbeth,
 “ 21st March 1805. Dear Sir, As I intend to marry
 “ Miss Walker immediately, come out as soon as you
 “ receive this, and bring stamped paper to write the con-
 “ tract, and every thing requisite to draw up a deed, to
 “ leave the whole of my landed property that I now have,
 “ or may afterwards acquire, strictly entailed.—I am, Dear
 “ Sir, your's sincerely, Q. M'ADAM. Mention this to no per-
 “ son, not even your son.” Q. M.”

This letter was posted for Edinburgh the same evening, and was received by Mr. Smith on the 24th. But, on the morning of the 22d March, when at breakfast, the deceased stated to the respondent that he wished to declare their marriage immediately, without waiting for Mr. Smith's arrival; and she having expressed her consent, Mr. M'Adam, “ between the hours of ten and eleven o'clock of the forenoon
 “ of that day,” desired his house servant, George Ramsay, to call in three of his men servants. When these persons had come into the dining room, Mr. M'Adam told them that he had called them to be witnesses to his marriage; and immediately thereafter asked Elizabeth Walker to rise up, which she did; and having given her hand to Mr. M'Adam, he

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holding it, said, "I take you three to witness that this is my lawful married wife, and the children by her are my lawful children;" which acknowledgment and declaration on his part was explicitly assented to and acquiesced in by the said Elizabeth Walker; and, on the coming in of Margaret Wylie, for whom he had also sent to be a witness, this same declaration was repeated a second time ANTE OMNIA. Thereafter Mr. M'Adam went out to see his workmen, and calling at the house of David Woodburn at Bellsbank, informed him that he had declared their marriage, whereupon Mr. Woodburn said he had heard so from one of the witnesses, and wished him much joy. He then asked Woodburn to dine with him that day at Berbeth.

Mr. M'Adam returned to Berbeth house between three and four o'clock. One of the servants heard, a short time afterwards, the report of a pistol, but took no further notice until the time when the dinner was laid; and, on going up stairs where Mr. M'Adam was, to inform him of the fact, he found him lying on the top of the staircase dead, with two pistols in his hand, and one found discharged.

Various proceedings occurred, and proof was allowed, not only of the marriage, but also of the allegation of insanity made by the appellant, as incapacitating him from entering into a marriage. The appellant also offered to prove a constitutional tendency to insanity, by offering evidence as to the insanity of his progenitors, but this was not allowed by the Court.

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On the whole cause, the appellant maintained three grounds:

1. That the deceased was, from insanity or mental derangement, incapable of contracting a marriage at the time when the pretended marriage with Miss Walker took place.

2. That the appellant ought to have been allowed the further proofs he offered with respect to that insanity.

3. That the respondents had not proved the pretended marriage by any competent and legal mode by which marriage can be constituted in Scotland; and that parole testimony was incompetent to prove a marriage in the way this is said to have been gone into.

The Commissaries pronounced this interlocutor:—"Having resumed consideration of this cause, with the productions and proof for both parties, and whole process, find it proven by real evidence, that some years prior to the year 1805, the late Quintin M'Adam had formed a resolution of making the pursuer, Elizabeth Walker, his wife, and

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“legitimizing the children which she had born to him at
 “some future period: Find it clearly proven, that on the
 “forenoon of the 22d day of March 1805, Mr. M'Adam car-
 “ried this purpose into execution, by joining his hands with
 “those of the pursuer and declaring her to be his wife, and
 “her children his lawful children, in presence of several
 “persons whom he had called up to his dining room to be
 “witnesses to this declaration: Find that this declaration
 “was made in the most solemn, serious, and deliberate
 “manner; that the late Mr. M'Adam was in his perfect
 “sound mind; that the deportment of the pursuer clearly
 “indicated her approbation of what Mr. M'Adam had done;
 “that on this occasion Mr. M'Adam and the pursuer mu-
 “tually accepted of each other as husband and wife: Find
 “these facts relevant to infer marriage betwixt the late Mr.
 “M'Adam and the pursuer; that by this declaration the
 “status of the pursuer as his wife, and of her children as his
 “lawful children, was fixed, and could not be affected by
 “any subsequent act of Mr. M'Adam: Find the condescen-
 “dence on which the defence was founded not proven, and
 “repel the defence, and decern in the conclusions of the
 “marriage and legitimacy in terms of the libel.”

The proof upon which the above interlocutor of the Com-
 missaries proceeded was part parole and part by writing.
 There were the following letters adduced to prove Mr.
 M'Adam's ultimate views in regard to Miss Walker: To Mr.
 Smith, his Edinburgh agent, he wrote,—“16th Feb. 1800.
 “Dear Sir, I am going to take a girl into keeping: Her name
 “is Elizabeth Walker, daughter of the late John Walker in
 “Knockdon, parish of Straiton. Get two bonds wrote in-
 “stantly, and be sure to send them by the very first post to
 “Ayr, binding me and my heirs to pay her sixty guineas
 “yearly so long as she lives. Write them so, that if I at
 “any time *marry her* that she gets no more jointure, unless
 “provided by a subsequent deed. I mean by that, to pre-
 “vent any claim to a third of the moveables. I suppose it
 “can be done; if not, write them as you see best. Be sure
 “that they arrive at Ayr on Wednesday or Thursday at fur-
 “thest. I shall be in Edinburgh the first week of March,
 “and will bring in the will; but is it not better to allow it
 “to remain as it is, until we see *what this produces?* I re-
 “main, Q. MACADAM.” Another letter to Elizabeth Walker's
 .Feb. 21, 1800. brother was in these terms:—“Dear James, You will per-
 “haps be surprised when I tell you your sister has come to

“ live with me. But I hope you will not be angry when I
 “ assure you that I mean to behave to her in the most hon-
 “ ourable manner. I have already settled sixty guineas on
 “ her yearly during her life. *I have made her no promise of*
 “ *marriage, but it is very probable it will end in that.* She
 “ and I would be very happy you would come over to-day,
 “ and if there be any further explanation you wish, I shall be
 “ glad to make it you. I am, Q. MACADAM.”

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Previous to the delivery of her first daughter in the month of January 1801, Mr. Macadam wrote to his Edinburgh agent in the following terms:—“ Berbeth, 19th Jan. 1801. Miss Walker will *lie in* in a few days; if I get the minister of the parish to christen the child, and pay the fine for a bastard child, will that, in the event of my ever wishing to declare a marriage, have any effect of illegitimating that child, or will it do it? Answer this immediately, it is the only part of the letter that requires an answer.” To this letter Mr. Smith immediately wrote the following answer:—“ Edinburgh, 22d January 1801. Dear Sir, I am this day favoured with yours of the 19th. Upon Miss Walker’s inlying, and your getting the minister to baptize the child, and your paying the fine for a natural child, all this will not prevent your afterwards legitimating the child, by declaring a marriage, in case you should afterwards choose to do so. From the time of the declaration of marriage the legitimacy of the child draws back to its birth, provided no other marriage has intervened.”

Then there followed the evidence of county gentlemen, who had dined at Berbeth, and who gave evidence to Elizabeth Walker sitting at table, and to Mr. Macadam becoming, particularly for the two years previous to his death, more kind and attentive. Several witnesses spoke also to his having conversed with them in a manner which led to the conclusion that he had an intention to marry Elizabeth Walker, in order to legitimate his children.

As to the plea of insanity, evidence was adduced that Mr. Macadam was a man of superior abilities and soundness of judgment; and this was followed by the evidence of the declaration of marriage, as above set forth.

Against the interlocutor of the Commissaries, a bill of advocacy was brought, but the Lord Ordinary refused the bill, and, on reclaiming petition, the Court adhered. In pronouncing this judgment, the Lords of the Court of Session delivered the following opinions:—

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THE LORD JUSTICE CLERK (HOPE).—“ The facts proved in this case are sufficient to constitute a legal marriage. I therefore lay it down as a fixed proposition, that here there is a marriage unless set aside, which we are desired to do, on an objection of the insanity of Mr. Macadam; but there is not the slightest ground to presume that he was so at the period of the declaration, nor the smallest idea of it in his former life. It appears that he had at Dollars a frenzy, for which, however, there is assigned a sufficient cause. He remained always in a firm state, at least to the date of the declaration. The connection he formed was with a woman whom he himself had seduced. By her he had children. His conduct shows plainly that his attachment to her was strengthened by the propriety of her behaviour; she bore him children, and he then took his resolution. For some reason, which I can suspect, but which is not explained, he did not wait for Mr Smith to make out his marriage contract, though he might mean a post-nuptial contract. He thought the sooner the marriage was declared the better; he resolves to solemnize it. If I ever saw a cool deliberate action it is this. What happened afterwards is unaccountable. I cannot think that he repented; the step which he took was the only one that, in such circumstances, a man of honour should take. I have had access to know something of a trial, where all the medical men in this city declared that the commencement of insanity was unaccountable. Marriage, although the most important contract into which man can enter, is, at the sametime, one of the easiest that the mind can form. I can figure cases where I could set aside a *contract of marriage* on the ground of facility in either of the parties, without setting aside the *marriage itself*. The marriage, in the present case, being then as valid as if done in the face of the church, must I presume that Mr. Macadam was insane at the time? I cannot. I remember one shocking case of a marriage which happened in England, in the neighbourhood of the school where I was: The ceremony had been performed,—the friends had met—there was a feast, dancing, and other things usual at the time on such occasions; in all these the husband took a share, but next morning it was found that he had killed his wife, and was gnawing her flesh. Suicide does not presume insanity, on the contrary, it is a crime punished by law. Insanity, in the present case, is not only not proved but disproved.”

LORD NEWTON.—“ I am clearly of opinion, from the written evidence, that Mr. Macadam from the first intended to marry the pursuer. There never happened any remarkable occurrence without his expressing this intention: his child he calls after his mother. His conversation with Mr. Campbell of Treesbanks has such an effect on his mind, that he declares that he would have betted that Mr. Macadam would marry the pursuer. Last of all, I see him write so in

express terms to Mr. Smith. This was the wisest thing he could do. He found the woman in every respect as he wished, and such her influence, I mean a proper influence, that he did not indulge himself in levity before her. I will not enter into the defender's argument, that a proof could not be allowed after death, as it appears to me destitute of the least foundation. This I hold to be as good a marriage, as observed by one of your Lordships on a former occasion, as if it had been celebrated by the Archbishop of Canterbury, or the Moderator of the Kirk of Scotland. With regard to the plea of insanity maintained by the defender, which is founded on the circumstances that took place at Dollars; these, so far from proving him insane, prove him, in my opinion, the very reverse. The surgeon no sooner sees him than he at once mentions the cause, and that, after a little medicine, he would get well, which accordingly was the case. Lord Eglinton's character is well known, and he selects Mr. Macadam as one of the most able men in the county to be a Deputy-Lieutenant, and to command a regiment. It is possible that his death was by accident, but, if otherwise, that act does not prove insanity. I never was more clear than that this is a good marriage."

LORD ARMADALE.—“ I shall only say a single word. I first thought the case one of great difficulty; but now that we have the whole cause, and the proof before us, there does not exist the smallest doubt or difficulty in my mind of the validity of the marriage. The interlocutor of the Commissaries, both in law and on the evidence, is sound. Mr Macadam's resolution and intention were the strongest possible. There is the clearest evidence of the declaration of the marriage. Upon the whole, I concur in opinion with the Lord Justice Clerk, and that Macadam was sane at the time.”

LORD HERMAND.—“ I had some doubt at first, from the manner of stating the cause, by which the evidence of marriage seemed to be rested on a mere *emissio verborum* offered to be proved. But that defect is obviated by the narrative in the summons of declarator. If it had not, there would have been much in the defender's argument that, as a *promise* cannot be proved, so, upon the same principle, neither ought *mere words*. The summons states, 1. That the intention to marry the pursuer, and legitimate her children, was communicated to several persons. 2. That Mr. Macadam sent for his servants into the dining room, and asked the pursuer to rise. 3. That this was repeated in presence of others. 4. That congratulations took place upon the occasion. 5. That the declaration was mentioned by Macadam to Mr. Woodburn. If these things are proved in a legal manner they constitute *marriage*, and, whatever may be thought elsewhere, they *ought* to do so. The evidence, 1st, Of the previous intention, of which the conversation with Treesbanks is a material circumstance, is not obviated by anything on the other side. But it gives insight into the ideas of Macadam, though not correct perhaps, and confirming the report mentioned by Mr. Oswald, that Macadam was to marry

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the pursuer if she had a son. The letter of 21st Feb. 1800, to the pursuer's brother, held out a prospect of marriage. That of the 16th to Mr. Smith is also material. If at any time he should marry, he was anxious, as in a probable event, to guard against giving the wife a right to the third of the moveables. His will, he says, is to be delayed till we see what this produces. He mentions, in the letter of January 1801 to Mr. Smith, that Miss Walker lies in soon, and inquires if the circumstance of the child being baptized as a bastard will prevent legitimation. Mr. Smith's answer of the 22d January shows his idea of the probability of Mr. Macadam marrying, and this child he names for his mother. His treatment of the pursuer is very different from that of most mistresses, his conversation is more delicate than even before his mother and sister. 2d, The declaration to Woodburn, on 21st March 1805, of intention to marry the pursuer; and the anxious letter to Mr. Smith, proves a fixed intention, unless he has been proved mad at the time. 3. The celebration, of which the evidence is clear and satisfactory, proves the statement in the libel. The trifling discrepancies only add to the effect of the whole; and it is confirmed by subsequent declaration to Woodburn. Is this less effectual than some words uttered before a person assuming the character of a clergyman, but truly not in holy orders? It is not disputed that *that* is effectual. It could not be disputed agreeably to the law of Scotland. I pay little regard to criticisms on precise words of witnesses; they all go to this, that there was a *declaration* of marriage *de presenti*. It is said that in marriage contracts the words are: 'We take each other for lawful spouses:' Yes; but other words follow, binding the parties to celebrate the marriage with their first convenience. It is said that the pursuer did not declare her acceptance. That she was not bound, nor could have been prosecuted for *bigamy* by the act 1551, c. 19. But she stood up when asked. She voluntarily joined hands twice, and accepted of congratulations afterwards. I will not run through the decisions. They establish the principle, that, like other consensual contracts, marriage is proveable *prout de jure*, subject, however, to some restriction, that the evidence be such as suffices *fidem facere judici*. Nothing remains but the plea of insanity, a plea that could only have occurred from the fatal end of Macadam's life. For it is difficult to imagine, in opposition to the testimony of so many witnesses of the highest respectability, that the defender could really believe his cousin was habitually insane, and certainly no such thing has been proved, but the contrary. Whatever encomiums the defender may bestow on his cousin Logan, he does not appear to have been in use to attend Mr. Macadam, unless an account of a few shillings should show him to have done so; I pay no regard to his *decided* opinion that Macadam was under the influence of melancholic insanity to a certain degree. I have, however, little doubt that he committed suicide, which generally proceeds from insanity at the time. But it may come like lightning:

God knows when it may. I think such was the case here, as Macadam was rational at the time of the ceremony; and rational in conversation with Dr. Hathorn and with Mr. Woodburn. It is said, that having formed the intention of suicide, he asked Woodburn to dinner. This strikes me in a different light. I rather conceive that he wished to drink the health of his new made wife, but was afterwards suddenly seized with insanity, in which situation he may have written the note about the three pointers, ludicrously called a codicil to his settlement”

LORD WOODHOUSELEE.—“ It has been a reproach that the law is so loose in the essentials of marriage, that it requires more form for the most trifling bargain about heritage, than is necessary for this most solemn of all contracts.—This is the narrowest question that ever occurred. After the fullest consideration, I have formed an opinion that this is not a legal marriage. The tutors, however, have done their duty. I rest my opinion on two grounds, 1st, Supposing Mr. Macadam really sound at the time he entered into this declaration, a ceremony gone into in such a manner, not followed by consummation, or *consortium vitæ*, was invalid, and ineffectual to constitute marriage; but, 2dly, I consider Mr. Macadam not at that time to have been capable of giving a deliberate consent. His declaration is nothing more than an obligation to enter into marriage, either by celebration *in facie ecclesiæ* or cohabitation. He did neither, and made it impossible—the obligation remained unperformed,—the declaration is not effectual,—two or three hours after, he might have called the same witnesses, and retracted while matters were entire. In another view, what is marriage but *consortium vitæ*? This is the essence of marriage, and certifies the connection; it is a consent that forms that *consortium vitæ*; if the man, however, declares that this shall not be, or by an act does so, the thing puts an end to it. It is plain that Mr. Macadam had resolved, that though he performs this ceremony, he had taken a determined resolution not to be bound by it. There is no way by which natural children can be legitimated, unless the father gives himself the character of husband as the law regards that relation when truly meant. I state these on the supposition of Mr. Macadam being sane. It was an obligation he never meant to perform; but he was not in possession of sound mind. There never was a more unfavourable case.—Mr. Macadam, in possession of immense fortune, for a course of years carries on a licentious intercourse, under a sort of indenture of prostitution; he writes a letter to Mr. Smith; does not sleep for three, four, or five nights; there shall be no contract; his impatience would not wait; he calls the servants, and makes a formal declaration; the writers on medicine describe the very case. These authorities speak sufficiently, and are conclusive to my mind. On the whole, my opinion is, that the judgment of the Commissaries is wrong.”

LORD BALMUTO.—“ The mode of proof betwixt a promise and

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declaration is different. The last is proveable by witnesses; declaration takes place immediately; no case comes up to the present; a consent merely expressed in words is not sufficient; intention is here expressed; but after that we have Mr. Macadam's opinion in a formal deed. Mr. Macadam in it states, that he never intended to celebrate a marriage; but he was not in a sound state of mind, of which no stronger instance is necessary than the suicide; the evidence of all the servants establish periodically fits of insanity; Mr. Woodburn is not a fair witness; Mrs. Wylie is alarmed at once for Mr. Macadam; at Dollars, he expressed a determination to finish himself. In these circumstances, a declaration not followed up is not sufficient. Mr. Macadam was not in sound mind, and he did not intend to give his consent."

LORD CRAIG.—“ My opinion is, that the interlocutor of the Commissaries is right. I will not go through the evidence of the declaration, or of Mr. Macadam's previous purpose. I am clear that this is not a promise of marriage, but a formal declaration, twice repeated, and in the most deliberate manner. This declaration, obligation, and contract, is as binding as if done by a clergyman after proclamation of banns. By it a *jus quæsitum* was instantly acquired by the lady and the children;—it may have been done with a view to give a status to the lady, and to legitimate the children. It is said that Mr. Macadam was not in his sound mind, but there is no proof of insanity, quite the reverse, as there is the strongest proof of his sanity. He had indeed stomach complaints occasionally; and on this subject the defender's strongest witness, Logan, expressed himself stronger than proper, and stands alone. This species of disorder is more usual than is generally supposed. There is evidence of Mr. Macadam's being that very day in sound mind,—what happened at Dollars was the effect of a riot, and was not the usual habit. The surgeon at once removed it. The last act, I am inclined to think, does not show him insane, and indeed that act, rash, violent, and criminal though it was, affords no proof of insanity. Among the Romans it was esteemed a virtue; but they had not the advantage of our religion; this act the law considers criminal. I feel the weight of the argument stated by Lord Woodhouselee, to find a thing to be a marriage, which, it was supposed, was not meant to be so. But if there is a marriage, a *jus quæsitum* acquired by third parties, a concluded deed, it is binding;—marriage, even on deathbed, is held good. By the law of Scotland, here, then, there was a valid marriage, and if Mr. Macadam had lived, he could not have married another woman. By that law, this is just as valid a marriage as if it had been done *in facie ecclesiæ*, after proclamation of banns; and indeed that case does not appear materially different from the present.”

LORD MEADOWBANK.—“ The case is not without difficulty, I felt the force of the arguments in the defender's memorial. There is

no doubt about the law of Scotland ; and I approve of that law as it exists, and the general habits of the people prove it to be good. I want no change in the marriage law. In no country that I know of is there so much correctness in the intercourse of the sexes ; and there is no source to which this can be ascribed with so much propriety as to the law. The Council of Trent first introduced the doctrine, that marriage without a priest was invalid,—but that Council had no force in this country. Here there is not an obligation or promise, but a marriage solemnized, and comprehending every essential that the law of Scotland requires, and no doctrine can be quoted contrary to it, except that of Lord Kames, which is universally reprobated. This Essay is, throughout, a tissue of error, always brought forward in consistorial causes of the present description, and always treated with contempt by the Court. He stated what, according to his ideas, should be the law, and, in so doing, gave a statement of our law calculated to shake it : indeed, his statement is contrary to all sound authority, and to decisions of this Court. Lord Stair's, Lord Bankton's, and Mr. Erskine's, are the opinions of the Court, the bar, and the country. The quotation from Macinnes is taken from the Faculty Collection, where only the one half of it is given ; but there is a strong argument to be drawn from that case, as there the House of Lords held a *consensus de presenti* sufficient to constitute marriage, although the consent in that case was not sufficient. As so many of your Lordships have delivered your opinions, in which I concur, that this is a good marriage, I will not take up more time ; I view it to be as valid as if done by a priest. I heard it stated that Mr. Macadam did not intend to act as a husband, and that he had formed this resolution ; but supposing there had been such a resolution previously adopted, of which there is no evidence, Can it be pretended that any such resolution was communicated to Elizabeth Walker ; and did she accept of him on these terms ? If so, it was a mummery ; but if not, did she not enter into the contract *optima fide* ? And is not that contract a *consensus de presenti*, constituting a marriage of itself, and requiring no subsequent cohabitation to confer on it any additional validity ? —It appears to me that it is out of sight to maintain now-a-days an opposite notion. Whence is it that Lord Stair derives the validity of promise followed by *copula*, but from the consummation, implying that a *consensus de presenti* had intervened, which is of itself marriage, though no clergyman is present to bestow his blessing ? The notion of the law is, that *that copula* proves the *consensus de presenti*, being the consummation of an actual marriage, and, of course, presuming such a *consensus* where there had been only a promise. It is by no means on the notion that *copula* bars *locus pœnitentiæ*. For without the *consensus de presenti* there could be no marriage ; and it is *consensus non concubitus* which, in the law of Scotland, constitutes marriage. It is therefore a total inversion

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of principles to construe the acknowledgment before the servants into a promise to be perfected by copulation or cohabitation. It is marriage *de presenti*, or it is nothing. Indeed it is even impossible to escape the ludicrous, were the subsequent *copula* to be required as an essential to complete a marriage, by acknowledgments between persons living in a state of cohabitation, as was here the case. I always considered Dobson's case a bad decision, where even an actual celebration was set aside: I would not allow the sacred forms to be sported with. I see evidence that Mr. Macadam asked Mr. Woodburn to dine with him; I do not believe it possible that he then intended to shoot himself. Mr. Cathcart has collected every circumstance to show that Mr. Macadam was affected with insanity; but it appears to me, after attending to every particular, that there is no ground to suppose that he was insane or incapable. There is reason to think that Mr. Macadam's death might be by accident, and the invitation to Mr. Woodburn is a confirmation of that. Mr. Macadam appears to have been a man of feeling, and could not overlook the shocking consequences of such a death; this idea is confirmed by the invitation to Mr. Smith. The fair probability of his death is, that it was by accident, but be that as it may, how far could a degree of melancholy affect the validity of his marriage? it could not. Had Mr. Macadam, at this time, been called out to discharge his official duty as a Deputy-Lieutenant and Colonel he would have felt nothing of such gloomy humours. Under that persuasion, I cannot bring myself to think that he was incapacitated to do what was in fact a duty, to legitimate his children, a benefit dictated by parental feeling, and highly favoured by the law of Scotland and by every law except that of England. Would you have voided his will, or his legacy as it is called, of the horse? Would you do that? You would not, nor would you have set aside a will by a person going to fight a duel, where the intention is that both will fall, and where generally the parties feel much agitation. You cannot, in such case, cut down even an unilateral deed, but far less so, where one enters into a contract with another, which, besides, was just and reasonable; the declaration in this case was an effectual celebration. I cast no reproach upon the witnesses; I never saw a collection of more respectable witnesses, and give full belief to their testimony. I cannot enter into any discussion about the propriety of medical language, in which the terms used may perhaps carry a very different signification from what they do to a lawyer. I see no expression *mala fide* uttered by the witnesses, or the slightest perjury among them."

LORD PRESIDENT.—“If I judged only of the *ex facie* appearance, I should be apt to draw the same conclusions with the majority of your Lordships. I remain, however, of my original opinion, that what is here called a marriage, is not, and ought not to be so. I refer to the cases of Collector Fullerton, Dobson, and Macinnes. I argued that last case, and think it not well judged. I do not go on that

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case, as I did not see sufficient ground for the decision. When I view this case, with all its circumstances, I admit the declaration, but I look to see if it leads to the conclusion. Nobody can doubt of Mr. Macadam being serious, but I doubt very much whether there was any intention in him to make this lady his wife ; the contrary is proven ; he meant to make her his widow. I believe that the moment he made the declaration he never intended to hold her out as his wife. Of all the contracts, marriage is the most solemn, but I allude to no ceremony, as I admit that marriage may be constituted without any, and without a clergyman ; this is quite a question of law. The facts are admitted, but the question is, Whether there is a legal marriage? What passed at the declaration is proof that there was no antecedent marriage ; his settlements hold her out as his mistress, and are unaltered down to the last moments of his life ; in these, this lady is styled a mistress, and her children illegitimate. He never intended to live with her, or to hold her out to the world as his wife ;—It is remarkable that he wrote the codicil in the morning before he went out, the language of which shows me that it was amongst the last acts of his life ; his conversation with the gardener is also remarkable, and he was in use to talk freely with him. Ramsay, when he took the shaving things to him, observed one symptom, that he could not be looked at ; See what happened that morning ; Ramsay, on seeing him, said he was ill, and left him ; In what situation is Mrs. Macadam and the housekeeper ? Was Mrs. Macadam in tears of joy ? No, it was from something else. I am satisfied that this gentleman never meant to pass one moment of his life with this lady. There was no symptom of insanity in Collector Fullerton, and his acknowledgment was set down deliberately in writing. I can make no difference between this case and that of Collector Fullerton. I have marked some instances of insanity. It has been asked if this marriage could be set aside on insanity?—but my opinion is, that what occurred here did not *per se* constitute marriage, though it might have done so. If I saw an intention I would sustain it, but he only meant to make her his widow. Celebration by a priest is, *per se*, marriage, but in other cases it is not. Suppose Mr. Macadam's wound had not been mortal, it would have been the duty of his friends to have cognosed him, and to have put him in custody. These are the grounds of my opinion. The question at issue here is, is it a marriage, or is it not a marriage ? I think it is not :—is it insanity or not ? There is no room as to the facts of the case."

The LORD PRESIDENT then asked the opinion of the Lord Reporter.

LORD ROBERTSON.—“ My opinion coincides entirely with that delivered by the majority of your Lordships.”

On the second advising of petition, 4th March 1807, the Judges were divided as below :—

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<hr style="width: 100px; margin-left: 0;"/> M'ADAM v. WALKER, &c.	LORD JUSTICE CLERK (HOPE.) " CULLEN. " ARMADALE. " BANNATYNE. " HERMAND. " CRAIG. " GLENLEE. " MEADOWBANK.	LORD PRESIDENT. " POLKEMMET. " BALMUTO. " DUNSINNAN, and " WOODHOUSELEE.

On LORD DUNSINNAN's vote being asked by the Lord President, his Lordship said, That although he inclined to think that the marriage was not valid, still he felt very great difficulty in voting so.

Against these interlocutors, in which these opinions were delivered, the present appeal was brought to the House of Lords.

After hearing counsel, on 10th, 14th, and 21st May, THE LORD CHANCELLOR ELDON said,

“ My Lords,

“ In a cause of such importance as this, I should have thought it my duty to crave time to consider it, before delivering my opinion thereon, if all my information on the questions it involves had been derived from the argument at the bar.

“ There has been an elaborate and most able argument on both sides. The case is of so much magnitude, that one would wish not only to consider all the observations made, and the decisions quoted, bearing upon the subject; but also to weigh the observations thereon, occurring to one's mind.

“ Besides, the information received from the argument at the bar is well assisted by a paper drawn by Mr. Clerk, which must give celebrity to his name as long as that paper exists.

“ But we have had a great deal more assistance upon this case. It is notorious that the doctrines contained in it have recently been matter of decision in some of the inferior Courts of this country, where inquiry has been made into the law of Scotland, as matter of fact, by the evidence of Scotch lawyers.

“ Premising these observations, I think it right here to mark the expression, that when, in the consideration of this cause, I mention a contract *de presenti*, I mean something different from a promise, or contract *de futuro*.

“ When I come to inquire into the validity of this marriage, the first question is, as to the sanity of the party; Whether Quintin Macadam was of such sound mind, at the time, as to be able to form this contract of marriage? If he was not, then this contract was invalid.

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“ Upon this point, my opinion is, that, upon the 22d of March 1805, he was of such sound mind and capacity as were perfectly sufficient to enable him to enter into such a contract.

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“ This renders it unnecessary for me to discuss the very delicate point, if it be or be not competent to enter into the inquiry by evidence, Whether insanity was a disease prevalent in his family or not? and, Whether a collateral relation from this cause, destroyed himself? The true question here being, Whether Quintin Macadam was insane or not, it is unnecessary to enter into an inquiry as to any special cause for insanity, or into the matter of hereditary insanity, because, if you come to the conclusion that he was of sane mind on the 22d of March 1805, it matters not if he was insane at any other period of his life, or if any of his relations were so insane?

“ If your Lordships affirm the interlocutors, it may be proper to come to a finding that it was unnecessary to decide this point.

“ It is impossible to deny that, if he was insane in 1803, and if his insanity was of such a nature as might recur, this circumstance might be of weight, when the question was agitated, Whether he was sane or not on the 22d of March 1805? But if he was then sane, we may lay aside all inquiry into his antecedent state.

“ I am not aware if there be any difference between the law of England and of Scotland upon this; There is no doubt in England, that if a person is sane at the time of his marriage, that contract will bind him like any other contract. The Legislature itself in this country was so careful upon this point, as to enact, that if a person, while under a commission of lunacy, contracts marriage, such contract shall be void. But this does not apply to other contracts, nor would it have applied to marriage, unless it had been so enacted.

“ It is usual in this country to direct issues to try the validity of deeds or wills executed by lunatics. If the parties are of sound mind when such deeds or wills are executed, these will be effectual.

“ A case lately occurred in the Court of Chancery, the name of which I do not recollect, but it will be remembered by the counsel at the bar,—where a young lady, near Hampstead, had been insane both before and after her marriage. She did not appear to me to be quite sane when examined by me. Her father had thought that it would benefit her to marry; and she was under no commission at the time. I directed an issue to try her sanity, and the jury found that she was sane at the time of her marriage.

“ I remember another cause in which I was counsel; I shall not mention the names of the parties. A gentleman was put into a receptacle for lunatics, and continued there till his death. In that house he made his will, and, after his death, a question arose, if this will was good or not? His testament was found to contain a variety of provisions for a numerous family, with proper and prudent views. It also carried into effect those purposes of his mind, which he had mentioned before his malady had occurred. This WILL was sustain-

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ed. It bears upon the present case, in so far as the act done on the 22d March 1805 appears to have been a purpose contemplated by Mr. Macadam as far back as 1800. In another point of view, it also bears upon it as to the question of insanity. I agree with Sir Samuel Romilly, that the stating a great many facts, and upon these facts, asking medical persons to say if these are not common in insanity, will not do; but I must admit that the question of sanity at the time of marriage, may be clearly connected with the other question, Whether, at the time a party conceived the purpose of marriage, he did so in connection with a purpose to commit suicide?

“ A gentleman, whom many of us knew, during the delirium of a fever, conceived a most unfounded dislike to his brother, who had attended him with pious attention during his illness. He got well, but he still retained his dislike to his brother; and he made a will, and disinherited him. Lord Loughborough, who tried the question, directed the jury, that, if they were of opinion that the will was made under a morbid affection of the mind, it was no will. Lord Kenyon said, that this was too delicate to go to a jury, and that, in this way, if he disinherited his brother, they must always hold that he was under a morbid influence at the time.

“ If we look at the case of this gentleman; it may be true that insanity will show itself in the state of his body; but we must inquire if his mind shows this insanity. Now, it appears to me, that if we look to the evidence of Woodburn, Hathorn, and the letters, it would be to destroy the intercourse of man with man, to say that he was not sane. I form this opinion upon the whole evidence.

“ It belongs to God alone (I speak it with awful reverence) to know the cause of the suicide in this case.—We cannot come to the conclusion, from all that we know of this man's mind, that he was insane at the time.

“ When I look at the notes that are given us of the opinions of the Judges in this case, I confess I don't distinctly understand a ground stated by the late illustrious President of the Court of Session (still living), that he considered Mr. Macadam's purpose to be to make Elizabeth Walker his widow merely; and this he takes as evidence of his insanity. In this part of the island, we do not understand how a person can be made a widow without having been previously made a wife.

“ On the other question in this cause, the matter of the marriage, I have great satisfaction in knowing that we have all before us upon this point that we can possibly ever learn. Though we cannot, in this cause, have the evidence of witnesses upon the law of Scotland, we have had such evidence given in two late cases in the Court of Chancery.*

* The names of these cases were given, but not very distinctly, as being Kim-mish and Thomas. (Note by D. R.)

Dalrymple v. Dalrymple, 1 Dodson's Reports.

“ In the recent case of *Dalrymple* there was a great deal of evidence given, though I can scarcely give the character of evidence to the depositions laid before the Court in that cause. Instead of the

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dry way in which we do these things here, in these depositions they set forth all the text-writers and decisions, and give a commentary on both.

“ We are under this embarrassment in that case, that there are five persons (whom we cannot name), all of them of great professional knowledge, in favour of the validity of a marriage by the contract *de presenti*. There are three others whom I also greatly respect on the other side. Great weight, too, is due to the documents to which I have alluded as depositions. We thus find that there is a great difference in the legal opinions upon this point.

“ Yet I must confess that I do not find the same difference in the judicial opinions that I do in the professional or extra-judicial.

“ It appears to be quite clear that the Canon Law was, upon this point, the basis of the law for all Europe. By that law, the contract *de presenti*, or the promise *de futuro cum copula*, made a marriage. The question is, how far this has been departed from ?

“ Do the text-writers in the law of Scotland contradict this law ? I think not. I have read Lord Stair again and again. I cannot construe him otherwise than that he distinguishes a contract *de presenti* from a promise *de futuro*. The contract *de presenti* is the same as a promise *de futuro*, if the law be as contended for by the appellant.

“ Mr. Erskine's language is exactly the same, and it is remarkable that he makes no question as to the proof by parole. He speaks of marriage by verbal promise ; and how can this be proved but by parole ?

“ I have also looked at the decisions again and again. I find in all of them, that a contract *de presenti* forms a present marriage, or *very matrimony*. As to the cases in the House of Lords, though they are not positive judgments on this point, I think they did not mean to trench upon what I understand to be the law. I shall not go through these.

“ If I find the law thus, I do not trust myself with the question, whether it be wise or prudent or not ; or if it ought to remain so. If it be bad, we cannot reform it, sitting as a Court of Appeal. But it is contended, if a contract *de presenti* forms a valid marriage, that there was no such marriage in the present case.

“ Let us consider the evidence as to this. The connection between the parties began in 1800. It occurred to this gentleman, it sometimes occurs to the minds of those who are acting profligately, that he might one day wish to marry her whom he was seducing.

“ He directed his agent, Mr. Smith, to prepare a bond for an annuity, and he requested him to take care, if this could be done, that it should be in full of jointure, in case she should become his wife.

“ In February following, the lady was pregnant, and Mr. Macadam writes again to his man of business, inquiring if the christening of the child, as a natural child, would endanger its legitimation in case of a future marriage with the mother. Your Lordships know that this had reference to a point in the law of Scotland, with re-

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gard to the effect of a subsequent marriage, upon the issue of the parties born before marriage.

“ The man of business informs him that this will not endanger the legitimacy of his child ; and he thereafter baptized her, as he mentions, with the christian name of his mother.

“ Thus you see some kind of intention of marrying her from the very beginning of the connection, and you see a similar intention appearing on the birth of a child. It appears from the evidence too, that he treated her with great respect.

“ At last he formed the purpose of marrying her : According to the parole evidence, he appears to have been under no previous promise to her. Mr. Oswald tells him of a report that he had promised to marry Elizabeth Walker ; he answers, ‘ How could you think me such a fool as to promise what I could do every day ?’

“ Richardson, one of the four witnesses present at what is stated to have been the marriage, says, that a fortnight before this time, Mr. Macadam told him, that he would not marry Miss Walker, and that he should blow out his brains the day he married her. Yet, it is to be observed of this person’s evidence, that when what is held to be the marriage, took effect, Richardson appears to have been under no alarm upon the occasion.

“ The transaction took place under the circumstances which I shall state. I think that all the precedent facts and circumstances are to be taken into consideration. At first, when the connection is formed, he says it may end in a marriage ; he directs his agent to make provision in his deeds with a view to this. At last he sends for certain of his servants and, in their presence, he says, ‘ This is my wife, and ‘ the children are my lawful children.’ This last was a very important part of his purpose. Their hands embrace ; and though all the witnesses do not exactly concur as to all that passed, yet there is no contradiction. It is quite clear that his intention was to make her his wife, and that, in point of fact and of law, he did make her his wife. From what appears of a conversation between him and the lady, and from what passed between them, there can be no doubt of her consent to this marriage.

“ He was not content with three witnesses, and he sends for Mrs. Wyllie, and then the same ceremony and embracing of hands are gone over again in her presence. The question is, if this was not a marriage *de presenti*, (a promise for a future marriage would not do) ; and therefore, whether it was not a contract from this moment forwards— an act and deed *eo instanti*—making them man and wife, just as much as a celebration before the priest would have been ? In such a case, a marriage by a priest would be undoubtedly valid, even though he had died in returning from the kirk.

“ The conduct of both parties at the time proves what this meant. Their subsequent conduct proves this also. We see that Mr. Macadam says to Woodburn, ‘ Now, Woodburn, I am a married man like yourself.’

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“ So you see the conversation between the lady and Elizabeth Wyllie (who by the bye appears to have been a little nettled at what had happened) shows her view of the effect of this. She mentioned that Mr. Macadam would not delay it till Mr. Smith came, lest he should have dissuaded him from it. Then she accepts the compliments of the servants, in her change of state, as a married woman.

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“ Is it therefore possible for your Lordships to have any doubt of what they meant, or that it was not clearly their purpose to contract marriage?

“ Now, the question comes, Can this be proved by parole evidence? It is obvious that there may be danger in proving in this way; but this suggests two considerations, 1st, Does the law in such a case admit of this species of proof? 2d, If some legislative measure should not be come to upon this subject?

“ I throw this last consideration entirely out of view at present; but, in regard to the first, I see no authority for saying, that a contract which may be completed in words or verbally, may not be proved by parole. In Scotland there is no regular form of words to be used in marriage, either by the parties or by the clergyman. I have not yet heard that a marriage, even *in facie ecclesiæ*, is such a matter of record as cannot be proved by parole testimony. How are all the marriages, not performed in the face of the church, but acknowledged to be good, to be proved, unless they be proved by parole? If this be a good marriage by the law of Scotland, I can see no reason why it should not be proved by parole.

“ It was said, that in a case with a subsequent *copula*, or habit and repute, you might prove by parole, though not where the copula or sexual intercourse, or habit and repute has not followed, which was the case here, the gentleman having committed suicide immediately after the act; but it is easy to get rid of this difficulty. How could a marriage be proved, if a party died by the act of God before any sexual intercourse took place, in any other way? My own opinion is, that this was a marriage, and might be proved by parole.—I am not afraid of the danger of permitting such proof here; it is a danger which exists in many other cases of marriage in Scotland.

“ I was much struck at first by what was urged upon the statutes of bigamy in Scotland: But Sir Samuel Romilly stated, in answer to this, what completely solved my difficulties; and it is clear that what was founded on these statutes applies to other marriages, as well as to marriages of this kind. In these, the evil is provided for as well as for this. But it would be too much to say, that, because there was no celebrator who could be punished under these statutes, that therefore this was not a marriage.

“ Upon the whole, my opinion is, that there was a marriage duly had, entered into, and proved.

“ We have seen to demonstration in this case, that our judgments, in matters of this nature, may be misunderstood. It may be right therefore to introduce into our judgment, in this case, such prefatory

1813. matter as will prevent the grounds on which it proceeded from being liable to misconstruction, and to show that we deemed it unnecessary, in this case, to make any decision on the very delicate point, of the receiving or not receiving the evidence of collateral insanity." (Here his Lordship read a minute of what was afterwards adopted as the judgment.)

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LORD REDESDALE said,

" My Lords,

" Concurring in the opinion which has been delivered, I shall only make observations on a few points connected with this cause.

" As to the alleged insanity, there does not appear to me to be the *slightest* proof of insanity at the time of the acts done, from which a marriage is inferred in this case.

" It was said that insanity was to be inferred from the fact of self-destruction ; but the law does not presume this, and accordingly it must be proved. - In this case, there was no proof of insanity at any time of Mr. Macadam's life, except in a case of extreme irregularity from hard drinking, and this was removed by medicine, and immediately. I therefore put the insanity out of the case.

" The only question is, if what passed on the 22d of March 1805 was a legal marriage or not? It was said, the acts of the Scots Parliament inferred that there could be no such marriage as the present. The act 1551, which respects bigamy, was mentioned, and it was contended that *that* crime could never be proved in reference to marriages such as this, because it only applied to a case of a regular marriage. But this admits of the answer made by Sir Samuel Romilly, namely, that the words of the act are not sufficiently strong, to show that a marriage could not be contracted in any other manner than in the face of the church. The act 1503 shows that a marriage might be sanctioned by the Legislature, though not thus celebrated. The view which the Legislature had by the bigamy acts was, that a greater weight of evidence was necessary, in criminal prosecutions, than for civil purposes.

" It was said that the act 1641 inferred that there could be no marriage without a celebrator. But it appears to me to infer no such thing, it refers to the case of a marriage without a celebrator as well as *that* by a celebrator.

" The act 1698, referring to the act 1641, contains certain enactments as to parties clandestinely or irregularly married ; and makes the same distinction as is done in the former acts. It enacts, that both the celebrator and witnesses shall be liable to punishment.

" In my opinion none of these acts contains any authority for the position that a clandestine marriage cannot be contracted without a celebrator.

" The text writers appear to me to be all adverse to the argument

maintained by the appellant. (Here his Lordship read from Lord Stair.) Lord Stair considers the distinction between a consent *de presenti* and a promise *de futuro* as clear. The appellant's argument went to abolish this distinction.

(His Lordship next read the quotation from Mr. Erskine.) "Mr. Erskine's opinion clearly is, that a marriage might be constituted by consent of parties, expressed before a magistrate, or before witnesses, and also by writing. In this passage, we find a clear distinction made between an act intended as a present marriage, and what was meant only as a promise *de futuro*; or espousals. The same distinction is made by Sir George Mackenzie. (His Lordship read the quotation from Mackenzie on the respondent's case.)

"In the decided cases, it appears to be clearly held, that if there was a consent to marry *de presenti*, the parties were from that moment to be considered as husband and wife. In the case of Mac-
lauchlane and Dobson, though no marriage was established there, it
seems to be clearly acknowledged that this was the law. Unques-
tionably there was no *copula* in that case. The Court below, which
held this to be a good marriage, so held it upon what passed between
the parties. But the Court, which altered the first judgment, con-
sidered that what passed verbally between the parties was of the
same import as the letters between them, and that they did not
mean to live together as husband and wife. On account of this
avowed resolution, it was held to be a promise merely, not a mar-
riage.

"It was contended in this case, that one of the parties never had the purpose to consummate the marriage. But if the woman thought the contract sincere, this could never alter the nature of the thing. But is there any evidence of this fact? I submit there is none. It is inferred only from the fact of his subsequent self-destruction, and from the evidence of Richardson. Did he mean to retract that the children were his legitimate children? I think not. When he said, "I marry their mother, and they are the inheritors 'of my property,' there is not the slightest ground to think that he meant any secret reservation to the contrary.

"There is evidence that he thought it a complete marriage from what he said and did at Woodburn's. All the witnesses make a clear distinction between the time when he was going to be married and when he was married. He says to Woodburn, 'I am *now* a 'married man like yourself.' Does not this demonstrate that he thought himself completely bound?

The only remaining question is, if verbal declarations like these can be proved by parole? I have found my mind unequal to follow the argument on this point. How can the marriages put by Lord Stair, and the other text writers, in the passages before quoted, be proved but by parole? In Maclauchlane's case, there was a proof by parole; so there was in the case of M'Kie and Ferguson in 1782.

What is contended for on the other side appears to amount to this, that

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there can be no proof of an irregular marriage, except by writing in some form or other. In the case of a regular marriage in Scotland, there would have been no writing. According to the acts of Parliament, writing is not necessary. But it was said, the verbal declaration of a party could not be proved by parole. Mr. Erskine, in the passage before quoted, no doubt says, a marriage may be constituted by writing, but he also says it may be constituted by consent before a magistrate or before witnesses.

“ What then, upon the whole, is the ground upon which you can be called on to reverse the decision of the Court below? The Court indeed was not unanimous, but, when I look at the opinions attributed to those who differed from the majority, I am not much impressed with them.

“ One of the judges thinks this verbal declaration a *mere promise*, which was not effectual. As to the nature of the obligation undertaken by Mr. Macadam, I cannot think this was a *promise*. It strikes me, that if there can be any marriage by a declaration before witnesses, this is such a marriage.

“ Where a declaration like this was preceded by cohabitation, matters can scarcely be said to have been *entire*. The parties were in very different circumstances from those of single persons. If nothing had been done, there would have remained as before, the contract; but if they had children, the parties had acquired a different character, and the children a different character. I do not know if, in this case, the children could have enforced the contract, but I apprehend that, in the law of Scotland, there are cases where the children might enforce the contract.

“ The judge to whom I before alluded, proceeds to say, ‘ What is marriage but *consortium vitæ*? And he infers, from the act of suicide, that Mr. Macadam never meant to fulfil this *consortium vitæ*?’

“ But how could Mr. Macadam alter the nature of the act by anything done subsequently? There is no evidence, except the suicide, of a purpose that there should not be such *consortium vitæ*. But if this purpose had been defeated, by his death by the act of God, or by his having been murdered, would this have altered the nature of the contract? Assuredly not. You must either hold that no irregular marriage can be good without a subsequent *concubitus*, or you must hold, that this was a real valid and complete marriage.

Nov. 13, 1795.
 M. 12690. “ Another judge says, that Mr. Macadam never meant to live with this woman, and that this was the same as the case of *Collector Fullerton*; but I see nothing in this case from which to assume the fact, that he had such a purpose; and even if he had, this was not an avowed purpose, and ought not to annul this act.

“ None of the judges below appear to have doubted of the competency of parole evidence in this case. It is impossible to infer from the law, as laid down in the text writers, that parole evidence would not be good in a case like this. Till the marriage act in this country, the whole proof of marriage might be by parole.

“ On the whole, I perfectly concur in the opinion expressed by the noble and learned Lord. I have stated my views on this case without much order, as they occurred to me. There is no room for the question of insanity here. I agree also with his Lordship, that we ought to follow that mode, in framing our judgment, which he proposes.”

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LORD CARLETON said,—

“ I concur with your Lordships. There was much evidence of the sanity on the 22nd of March 1805, and none of insanity, except the act of suicide ; but insanity is not to be inferred from this act alone ; if it were so, there could be no such thing as *felo de se*.”

24th May 1813.* The Lords find, That it is proved by competent evidence, that Quintine M'Adam and the pursuer did, on the 22d day of March 1805, intend to contract marriage, and become husband and wife, and did then forthwith contract matrimony and become husband and wife by declarations and acts made and done solemnly, seriously, deliberately, and publicly, before several witnesses for such purpose; and that it is also proved by competent evidence that the said Quintine M'Adam was, at the time of such declarations made and acts done, of competent mind and understanding, to contract marriage; that the evidence repelled, if received, could not have affected such evidence, and that therefore it is not necessary to decide whether such evidence ought to have been received. And therefore it is ordered and adjudged, that the said appeal be dismissed, and the interlocutors be, and the same are hereby affirmed.

Journals of
the House of
Lords.

For the Appellants, *Henry Erskine, John Clerk.*

For the Respondents, *Ad. Rolland, Sir Sam. Romilly,
Geo. Cranstoun, Tho. Thomson.*

[Dow's Rep. vol. i. p. 32.)

JOHN WATT, Merchant in Dundee, *Appellant ;*
JOHN MORRIS, Younger of Allanhill, and } *Respondents.*
WM. WALLACE, Merchant in St. Andrews, }

House of Lords, 10th May 1813.

INSURANCE—UNSEAWORTHINESS.

An insurance was effected on a vessel for £700, freighted

* The date at the beginning of this case is a misprint.