

No. 12.

Sir RICHARD BEMPDE JOHNSTON HONYMAN Baronet,  
Appellant. — *Lushington—Sandford.*

ELIZABETH CAMPBELL or HONYMAN, and ELIZABETH and  
ALEXA HONYMAN, Respondents.—*Lord Advocate (Jeffrey)—*  
*A. M'Neil.*

*Husband and Wife—Marriage—Process.*—Held (affirming the judgment of the Court of Session), that under a summons libelling a marriage chiefly on a consent per verba de præsentis, but also alleging that it would be otherwise proved by facts and circumstances, it was competent to find a marriage proved otherwise than by de præsentis words. 2. That letters, without containing any direct promise, and the conduct of a party, established a promise of marriage; and being followed by copula, a marriage was constituted.

March 3, 1831.

2<sup>D</sup> DIVISION.  
Consistorial.

ELIZABETH CAMPBELL, daughter of the deceased William Campbell, merchant in Edinburgh, describing herself as wife of Sir Richard Bempde Johnston Honyman, and Elizabeth and Alexa Honyman, describing themselves as the children procreated of the marriage betwixt these parties, raised an action of declarator of marriage and of legitimacy against Sir Richard, before the commissaries of Edinburgh.\* The summons set forth, “ That in the month of May 1808 the complainer entered “ as governess into the family of the deceased Sir William “ Honyman of Armadale and Graemsay, Baronet, and con- “ tinued to live therein for six years and four months: That “ while living at their house of Smyllum Park, near Lanark, the “ said Richard Bempde Johnston Honyman professed the greatest “ love and affection for the complainer; and she, having fallen “ into a bad state of health in the year 1812, was advised to go to “ London by sea, which she did accordingly in the month of June “ that year, with the permission and approbation of the said Sir “ William Honyman and his lady: That the complainer having “ lived with a relation of hers, No. 8, Millman Street, London, for “ several weeks, and the said Richard Bempde Johnston Hony- “ man having, a short time before the complainer left Scotland, “ gone to Cheltenham, he, soon after her arrival in London, went “ there also, and visited her daily, and sometimes twice a day, at “ the house of her relative in Millman Street, during the whole “ period that she remained in London: That she having re- “ turned from London to Smyllum Park, he, the said Richard

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\* The discussion related, however, exclusively to the constitution of the marriage.

March 3, 1831.

“ Bempde Johnston Honyman, arrived there much about the  
 “ same time, and continued his attentions and professions of love  
 “ and esteem for the complainer as before : That some time in  
 “ the month of November or the beginning of December 1812  
 “ he was elected Member of Parliament for Orkney ; and being  
 “ obliged to go to London about the beginning of the year 1813,  
 “ to attend his duty in Parliament, he, for some time previous  
 “ to his setting off, expressed the strongest love, affection, and  
 “ esteem for the complainer—courted her in marriage—begged  
 “ and entreated of her to allow him to write to her, and that she  
 “ would answer his letters, which, he said, would be some con-  
 “ solation for what he would suffer during their separation :  
 “ That she having agreed to this, he, a few days after his arrival  
 “ in London, and before he had written to any of the members  
 “ of his father’s family, wrote to her ; and they having kept up  
 “ a correspondence, he, in all the letters which he sent her from  
 “ London, expressed the strongest love, affection, and esteem for  
 “ her : That having returned from London to Edinburgh in the  
 “ year 1813, or thereby, he, upon his arrival, and at his first  
 “ meeting with the complainer, expressed most unbounded  
 “ affection for her, and said that his determination was that they  
 “ should not again part : That he continued to reside sometimes  
 “ at his father’s house in Queen Street, Edinburgh, and some-  
 “ times at Smyllum Park, from the month of April to the  
 “ month of June 1813 inclusive, and during this period his  
 “ courtship and solicitations to the complainer were incessant.  
 “ He took every opportunity of being with her in her own room,  
 “ and of walking out with her whenever he had an opportunity :  
 “ That in consequence of his addresses, professions of love  
 “ and esteem, continued and repeated for nearly two years,  
 “ both verbally and by many letters, he gained the complainer’s  
 “ affection ; but she, considering that a marriage betwixt them  
 “ might not be altogether agreeable to his parents or others of  
 “ his relations, for some time endeavoured to dissuade him there-  
 “ from. He, however, having persevered in his professions of  
 “ love and proposals of marriage, requested that she would  
 “ accept of him as her husband, and that their marriage should  
 “ be kept private for a short time ; and in particular, he, early  
 “ on the morning of the 20th day of June 1813, came into the  
 “ complainer’s bed-room, in his father’s house at Smyllum Park,  
 “ when he earnestly solicited and entreated the complainer that

March 3, 1831. “ she would consent to take him as her husband, declaring that,  
 “ on the first opportunity which they had of leaving Smyllum,  
 “ he would legally make her his wife : That the complainer having  
 “ resisted his entreaties at this time, he asked her why she would  
 “ not consent to his wishes, adding, that she might depend upon  
 “ his honour, and that no one could possibly know what had  
 “ passed betwixt them ;—to which she answered, ‘ I believe  
 “ I may depend upon your honour ; but were every eye shut,  
 “ every ear closed, and every tongue silent, much and dearly as  
 “ I love you, I should know the circumstance myself, and that  
 “ would be sufficient to make me miserable :’ That the said  
 “ Richard Bempde Johnston Honyman, defender, continued to  
 “ beg and entreat of the complainer to consent to his wishes,  
 “ assuring her that he was then incapable of injuring either his  
 “ own honour or her’s : That next morning he left Smyllum Park  
 “ for Edinburgh ; but having returned thereto upon the 24th  
 “ or 25th day of the said month of June 1813, he, upon the  
 “ evening of the day he so returned, came into the room where  
 “ the complainer was at the time, and having repeated his  
 “ entreaties that she would consent to their being married, she,  
 “ in answer, said, that she never would hesitate to become his  
 “ wife, and that to him every affection of her heart had long  
 “ been dedicated, but called upon him at same time to  
 “ recollect, that, by marrying her, he might be making a sacri-  
 “ fice in the eyes of his relations, seeing she could not offer him  
 “ any fortune ; and that however respectable her connexions  
 “ were, his parents might not consider them to be sufficiently  
 “ so to qualify her for their son’s wife ;—to which he answered,  
 “ that he would consult his own happiness, and not that of his  
 “ relations : That, upon this, he asked the complainer if he might  
 “ call her his wife, to which she having assented, he said to her,  
 “ ‘ Do then, my beloved wife, let me hear you call me husband ;’  
 “ —to which she replied, ‘ Dearest, dearest, Dick, you are my  
 “ husband ;’ and the parties having thus mutually accepted of  
 “ each other as husband and wife, the said Richard Bempde  
 “ Johnston Honyman addressed the complainer in the following  
 “ words :—‘ You are now mine for ever, Betsy ; and, as my  
 “ wife, you must share whatever I have in this world. You  
 “ know I have just £200 a-year, and the half of it must be  
 “ yours :’ That they afterwards lived and cohabited privately  
 “ together as husband and wife of each other ; and he has been

“ heard, by persons in his own family, as well as by others, to March 3, 1831.  
 “ acknowledge the complainer as his wife: That of this marriage  
 “ the complainers Elizabeth and Alexa Honyman were pro-  
 “ created; and the complainer Elizabeth was born, upon the  
 “ 27th day of May 1814, at Smyllum Park; and Alexa was  
 “ born, upon the 27th day of May 1816, at York: That  
 “ the said Richard Bempde Johnston Honyman, defender,  
 “ when not living in the same house with the complainer,  
 “ wrote a great many letters to her from time to time, evi-  
 “ dently proceeding upon the assumption that marriage had  
 “ been promised or contracted betwixt the complainer Eliza-  
 “ beth Campbell and him: That none of these letters have  
 “ dates affixed; but one of them, which was written by the  
 “ defender, then in London, to the complainer, refers to a  
 “ communication which the complainer had made to him of  
 “ her being with child in consequence of their intercourse; and,  
 “ after many endearing expressions, he says,—‘ Tell me, my  
 “ Betsy, if you think there is any likelihood of the event which  
 “ you and I talked about taking place. If so, you must come  
 “ directly. I must be with you to comfort and soothe you, and  
 “ to partake of the joy such an event will excite. You can  
 “ easily manage to leave Smyllum, by assigning the excuse which  
 “ you mentioned to me. How is your health, my beloved wife?  
 “ Take care of it; and pray do not, as you are too apt, trifle  
 “ with that which so ultimately constitutes your own happiness  
 “ and mine. If you are not very very fat when we meet, I shall  
 “ be much mortified. If you love me, dearest, get fat. It is the  
 “ only thing wanting to make you all I can wish. I dread dis-  
 “ covery of this epistle. Write me the family movements, and  
 “ inform me when they return. O! how much I long to be with  
 “ you. It is the only thing I have to look forward to that cheers  
 “ my forlorn heart. Farewell! every blessing be with you, my  
 “ ever dearest affectionate. Your ever unalterable, sincerely at-  
 “ tached, and affectionate:’ That from said letter, with other  
 “ letters and documents which will be produced, and from facts  
 “ and circumstances to be proved, it will be made to appear,  
 “ that the complainer and the said Richard Bempde Johnston  
 “ Honyman, now Sir Richard Bempde Johnston Honyman, are  
 “ married persons, husband and wife of each other; and that the  
 “ complainers, Elizabeth Honyman and Alexa Honyman, are  
 “ their lawful children.” This was followed by the usual conclu-

March 3, 1831. sions in regard to marriage and legitimacy, with an alternative one for damages in respect of seduction.

Sir Richard admitted that the pursuer had been the governess of his sisters at Smyllum Park (the country residence of his father, the late Lord Armadale, one of the Judges of the Court of Session, whose town residence was in Queen Street, Edinburgh) : That he returned from India in bad health in September 1811, when he was about twenty-four years of age, and she about twenty-six : That he took up his abode at Smyllum Park, and was in daily intercourse with her. That she went to London in spring 1812; and that he visited her at the house of Mr. Chambers, her uncle, in Millman Street: That she returned, on the recovery of her health, in the course of the same year, to Smyllum Park, to which place he had shortly before come: That the intercourse continued: That in December of that year he was elected Member of Parliament for Orkney, and, in consequence, again went to London early in 1813, while she continued to reside at Smyllum Park: That he returned in spring of the same year, and their intimacy was renewed: That in this summer he obtained possession of her person: That she left Smyllum Park in the end of 1814: That he again had connexion with her in 1815; and that he was the father of the children. But he denied the marriage; and he alleged that the approaches were not made by him towards her, but by her towards him, and that she was particularly forward in her manners. This allegation was, however, afterwards negatived by witnesses adduced by himself.

From a proof allowed by the commissaries it appeared, that after he went to London in 1813, and before any copula, a correspondence by letters took place between them; but part of those which he wrote to her were lost, under circumstances to be hereafter mentioned; while he admitted that, not long previous to the institution of the present action, he destroyed those which she had written to him.

In February 1813 he wrote to her the following letter, addressed to "Miss Campbell," at Smyllum Park.

" 30, Duke Street, St. James's.

" You will probably have conceived, by the time which I have  
 " suffered to elapse since the permission which you so kindly  
 " granted me, that I did not intend availing myself of it; but so

“ bewildered and agonized have I been since our separation; that March 3, 1831.  
 “ I have been unable to give utterance to my feelings, or form  
 “ one rational sentiment, even to her who is the tenderest object  
 “ of my regards. O my dearest darling Eliza, much as I thought  
 “ I loved when we were together, still does it fall far short of  
 “ that affection I now feel, and so fondly cherish towards you.  
 “ If the sentiments which I so ardently feel, and have so repeat-  
 “ edly avowed, be reciprocal, hesitate not to say so. I am unable  
 “ to doubt, after the innocent endearments with which you have  
 “ favoured me, that it should be otherwise; yet still, as a solace  
 “ to my woes, refuse not this solicitation. Write me. Tell me  
 “ that I am dear to you, thou lovely girl. Would that we were  
 “ once again together, and nothing shall separate us. I look  
 “ forward with rapture to our again meeting, and then we must  
 “ form plans for putting our feelings out of the reach of hate. I  
 “ intend being with you much sooner than I intended. From  
 “ the embarrassed state of my father’s affairs, my residing in  
 “ London is both improper and disagreeable; and it was  
 “ only to please him that I ever went. God knows how bad  
 “ a politician I shall make, and I would resign such a situation  
 “ with great happiness. I went yesterday and paid a visit to the  
 “ outside of No. 8, Millman Street. The blinds were up, and  
 “ the windows open. Ah! thought I, they have a different in-  
 “ mate in the house now to what they had when I knew it, and  
 “ the conclusion sunk deeply on my heart. Believe ‘me, I feel a  
 “ fondness for the house, for it was once the abode of Eliza. I  
 “ took a most accurate survey of it. The windows were new  
 “ painted, and there was the little Chambers, who took such an  
 “ insurmountable antipathy to me, looking out at one of them.  
 “ Farewell for the present, my dearest Betsy, thou best beloved.  
 “ Love me as I love you, and put my heart at rest by assuring  
 “ me of it. You will receive this on Monday, and write me  
 “ soon. God bless you, thou dearest girl. Again farewell; and  
 “ believe me, with an attachment strong as it is pure, yours most  
 “ affectionately, R. B. J. HONYMAN.”

On receiving from her an answer to this letter, he in the same month replied:

“ I received your most welcome letter this morning, my ever  
 “ dearest Eliza. Well does it deserve an immediate acknow-

March 3, 1831. “ ledgment. Never can I sufficiently thank you for the alacrity  
 “ which you have displayed. I rejoice to think, my sweetest love,  
 “ that you do know how impatient I am. If that be one of my  
 “ failings in the common occurrences of this sad world, how much  
 “ is it increased when expecting a letter from you. I may safely  
 “ say, that the only real enjoyment, I have had since leaving you  
 “ is the perusing of your letters. Many is the kiss I give them,  
 “ and many is the sigh that escapes when I think at what a  
 “ distance the dear writer is at. Soon, however, I trust, we  
 “ shall meet, and one soft embrace will repay me an age of  
 “ anxiety and distress. Oh, my darling Eliza, my dearest  
 “ beloved, my sweetest and my only love, with what anxiety do  
 “ I look forward to again beholding you—with what rapture do  
 “ I anticipate the realizing of those visions which my fancy has  
 “ already formed. Nothing, I trust, will thwart the happiness  
 “ I look forward to — nothing shall, nothing can ; for it is felicity  
 “ sanctioned by virtue herself, and every thing that is tender  
 “ and amiable. In offering you, my best beloved, that heart  
 “ which has for a long time been devoted to you, I have only  
 “ to lament that it is not a more deserving gift to her to whom  
 “ it is offered. We will talk over the future when we meet.  
 “ Would there was a Millman Street in Edinburgh ; opportu-  
 “ nities cannot, however, be wanting, and we must make the  
 “ most of them. I delivered your dear letter this day. Send  
 “ all your letters to me, and they shall be delivered. Never am  
 “ I so happy as when engaged in your service. Anxiously do  
 “ I look forward to Wednesday. Never, thou dearest girl,  
 “ disappoint me in hearing from you. Tell me the day you  
 “ mean to write, that I may have something to look forward to.  
 “ Believe me, I am deserving of all your sympathy and all your  
 “ love, for I am, without you, a wretched mortal. Farewell,  
 “ thou in whom all my joys are centered ; my lovely Betsy,  
 “ adieu. Believe me ever yours, most faithfully attached,

“ R. B. J. HONYMAN.

“ *P. S.*—Pray, my love, direct your next cover to your aunt’s.  
 “ I am apprehensive of Queen Street.”

In the spring of the same year he also wrote to her the following letter :

“ My dearest, dearest Eliza,—If I were not the very worst  
 “ correspondent in the whole world, I should have wrote at least

“ half a dozen of letters before now, in return for the affectionate March 3, 1831.  
 “ ones I have received from you. I ask but a continuance of  
 “ such goodness for one fortnight longer, and by that time  
 “ I hope to be indebted for favours of a still more tender sort  
 “ than even those of your dear letters. How much, my sweetest  
 “ love, am I now your debtor, and how happy am I to ac-  
 “ knowledge it. My dearest Eliza, my darling friend, you who  
 “ are every thing to me, in whom my whole happiness is cen-  
 “ tered, and whom, while I exist, I shall never cease to love;  
 “ even death itself shall not subdue the fervour of my attach-  
 “ ment. If it be permitted the immortal part of us to retain  
 “ the recollection of those who on earth were most dear, I’ll love  
 “ thee then, even when my love can no more avail. You deprive  
 “ me, thou who art the most dear of thy endearing sex, of a very  
 “ great pleasure, by prohibiting my delivering your letters to  
 “ our uncle. Be it so; I obey, as you desire. You cannot,  
 “ however, insist on my not visiting the street, without being very  
 “ arbitrary. No such prohibition having as yet arrived, I shall  
 “ continue, as heretofore, to visit it once in the day at least.  
 “ As to your letters, thou dearest of women, I can never burn  
 “ them. If you are afraid to trust,—but no—you are too gene-  
 “ rous; you judge people too much by your lovely self to sup-  
 “ pose any improper use should ever be made of them. I  
 “ cannot destroy; but may I be bereaved of every thing I value  
 “ in existence, or existence itself, if I ever, under even every or  
 “ any circumstance, betray a sentiment or syllable of such  
 “ affectionate effusions. Indeed, you may trust me, my love;  
 “ but it shall only be until we meet, for I will deliver all your  
 “ letters into your possession. Farewell, my only love; God  
 “ bless you, my sweetest Eliza. Yours ever,

“ R. J. HONYMAN.”

He returned to Smyllum Park towards the end of April, where he continued till June or July 1813. He admitted that during this period he for the first time had connexion with her. She alleged that it took place upon the night of the 24th or 25th of June; that his courtship had previously been incessant, and his solicitations to acknowledge him as her husband, and admit him to the privileges, had been urgent; that (as stated in the summons) upon this occasion he asked her if he might call her his wife, to which she having assented, he said to her, “ Do then,



March 3, 1831. “ my beloved wife, let me hear you call me husband.” To which she replied, “ Dearest, dearest Dick, you are my husband.” Whereupon he said, “ You are now mine for ever, Betsy ; and, “ as my wife, you must share whatever I have in this world. You “ know I have just £200 a-year, and the half of it must be yours.” She alleged that these expressions had been overheard by his sister Jemima ; and in consequence that lady was examined as a witness, and emitted the following deposition :—“ Depones, That “ the family resided at Smyllum Park in summer 1813, and her “ brother resided with them there at that time. Interrogated, “ Whether, in the month of June 1813, or in the course of the “ summer of that year, she recollects of overhearing any con- “ versation betwixt the pursuer and defender, who were in a “ room adjoining one in which she, the deponent, accidentally “ was at the time? depones and answers, No; I never overheard “ any conversation between them whatever. Specially interro- “ gated, Whether, upon any occasion, she heard the pursuer, in “ addressing the defender, use words to the following effect, “ ‘ Dearest, dearest Dick, you are my husband ;’ and to which “ he replied, ‘ You are now mine for ever, Betsy; and, as my wife, “ you must share whatever I have in the world?’ depones and “ answers, No; I never heard any thing in the kind. Interro- “ gated, Whether she ever observed any particular intimacy “ betwixt the defender and the pursuer,—any intimacy more “ than was natural betwixt her brother and one who was in the “ situation of governess in her father’s family? depones and “ answers, No, none whatever; no more than what took place “ betwixt her and any of my other brothers and cousins who “ were at that time in my father’s family. Interrogated, “ Whether she is certain of never having, at any time, or upon “ any occasion, overheard any such conversation as the one “ above mentioned betwixt the pursuer and defender? depones “ and answers, No, upon no occasion; I am quite sure I “ never did. Interrogated, Whether, upon any occasion, she “ recollects of using any expression in speaking to the pursuer, “ such as calling her her sister? depones and answers, No, “ I never did upon any occasion. Interrogated, Whether, “ upon any occasion, she ever said to the pursuer, that she was “ sure she was her brother’s wife; and that she, the deponent, “ would take great care of her children? depones and answers, “ No, I never did. Interrogated, Whether, upon any occasion,

“ she ever said to the aunt of the pursuer, in presence of her March 3, 1831.  
 “ mother and sister, that she, the deponent, was sure the  
 “ pursuer was her brother’s wife? depones and answers, No,  
 “ I never did.”

The pursuer having gone in the winter of 1813 to Edinburgh, the defender wrote to her this letter from Smyllum Park :—

“ My darling Betsy,—I have received your letter very safely,  
 “ and request you will give yourself no uneasiness about it.  
 “ Careless as I confess myself to be about many things, I never  
 “ had, and, moreover, most solemnly swear to you, my dearest  
 “ love, that I never will have, cause to upbraid myself with  
 “ inattention to any thing relating to your dear self. The  
 “ assurances which you have given ought to satisfy me; but I  
 “ long to hear them while locked in your arms, and pressed to  
 “ that heart of hearts, the only one that mine will ever throb  
 “ at approaching. You have every thing, my best beloved, for  
 “ securing my affections; and the result will prove the truth of  
 “ my assertion. You are every thing in the world to me.  
 “ Without, I am bereft of every thing; and possessing you,  
 “ I have nothing more to ask. Trust me, love, I know my own  
 “ heart; and believe me, my beloved, these are its sentiments.  
 “ I am writing in the midst of interruptions, and time presses.  
 “ I rejoice you are to be with us on Wednesday next. The  
 “ carriage will be in on Monday with William, and you can  
 “ come out in it. How I long for you, my dearest love; how  
 “ I long for Wednesday, and all its joys and pleasures. What  
 “ a scrawl, Betsy; how unconnected the sentences; in short,  
 “ what a production. It is a letter that requires a partial eye  
 “ like yours to peruse. I have time for no revisions, but I  
 “ trust there is need of none. The language of the heart,  
 “ in however uncouth a form, should be the most acceptable.  
 “ Farewell, thou joy of my life; dearest, dearest, dearest being,  
 “ darling Betsy, your ever affectionate and unalterably attached,

“ R. J. HONYMAN.

“ P. S.—Let me hear of your health by Jemima. Do not  
 “ tire; nor write again, as the time of our meeting is nearer  
 “ than I had dared to hope.”

Both of them being in Edinburgh, and she being resident at this time in the house of her aunt, Mrs. Fraser, the defender

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having (as she alleged) taken some jealousy for a supposed predilection shown by her to one of his brothers, addressed to her this letter:—

“ I know not what to say after our meeting to-day. It has  
 “ made me very unhappy ; but still I cannot upbraid myself with  
 “ being culpable. I wish to think no more of it, for I cannot  
 “ believe your behaviour proceeded from any diminution of  
 “ affection, or from a change of those feelings which you have  
 “ so frequently expressed for me. You must also forget the past,  
 “ and impute my behaviour to surprise and regret at finding  
 “ what I conceived to be coldness and...[*torn*]...where I so little  
 “ exp

“ Farewell, Betsy, I have diseased  
 “ imagination ; but I trust you will never be able to accuse me  
 “ of having a bad heart. Believe me, I would not intentionally  
 “ hurt any one, far less that being for whose happiness I would  
 “ lay down my existence. R. B. J. HONYMAN.”

(Addressed to) Miss E. Campbell, }  
 Mrs. Fraser's, 1, Mound Place. }

In the spring of 1814 he went to London, and wrote the following two letters, the one of which was much torn, and the other contained an expression (“ beloved wife”), which, being written upon an erasure, led to an investigation, by means of persons of skill, as to whether it was an ex post facto superinduction, or had been written at the time. The evidence was inconclusive, but rather preponderated to the latter alternative. The first of these letters, said to be dated in April 1814, was, so far as preserved, in these terms:—

“ My dearest, dearest Eliza,—I received your kind letter some  
 “ days ago, and ten thousand thousand thanks to the dear writer  
 “ of it. You have made me truly happy by the affectionate senti-  
 “ ments you avow to feel for me, my darling love. I pray hea-  
 “ ven I may only merit a continuance of your love and regard.  
 “ Never in this world can I be happy without you ; and if I do  
 “ but possess such a treasure, it shall be my sole study to pro-  
 “ mote your happiness by every means that is within my power.  
 “ There are obs( )les in the way ; but these  
 “ surmounted. Write me love and tell me what  
 “

“ do, I will abide by whatever March 3, 1831.  
 “ best, but let the letter  
 “ dictated by love and  
 “ I had began to think  
 “ our intention to write  
 “ impatient was I at not hear-  
 “ by the return of  
 “ you are, as I hope, equally  
 “ a thing my long  
 “ have tended to ease  
 “ these lines, however,  
 “ must efface every idea of the kind ; for, believe me, my heart is  
 “ entirely yours, and you are the object of its tenderest regards.  
 “ I often think of the happy nights I have spent with you in the  
 “ school-room, but let me hope there are some still more exqui-  
 “ sitely so to come. I hope to be once again in your lovely  
 “ arms, my dearest Betsy, before another month elapses. I can-  
 “ not but warmly approve of the reason you gave for going out  
 “ the day we left Edinburgh. Oh, my love, ever bear in mind  
 “ that henceforward you have made them over to me. You  
 “ have now no embraces for any one else, not even for aunt  
 “ Fraser or sister Anne. I call them so, for your aunt is my  
 “ aunt, and your sister my sister—  
 “ As our affection  
 “ ciprocal, I hope our  
 “ are so likewise, if mine  
 “ so. I will tutor them to  
 “ to Eliza. Farewell thou  
 “ girl, believe me, with  
 “ which a warm and d  
 “ heart is capable of feeling  
 “ ever,

R. J. HONYMAN.”

The next letter, said to be dated in May, and which contained the above expression (“beloved wife”), was as follows:—

“ My dearest, dearest Eliza,—If you think I have forgotten  
 “ you, my best beloved, by having allowed two days to elapse after  
 “ their departure from Smyllum without writing, you will judge  
 “ me very wrong. Friday would have been too soon to write, and  
 “ Saturday morning I went into the country, from whence I have  
 “ but within this hour returned. Now, that I am away from you,  
 “ I know how much I love you. I have no happiness except

March 3, 1831. “ looking forward to being, once more with you. God knows  
 “ when that will be. Not for some weeks, if my father persists  
 “ in coming to London. If not, I hope very shortly to embrace  
 “ the darling of my heart. Betsy, love, my fate is fixed. I  
 “ never can exist without you ; you are the only comfort of my  
 “ existence. How much do I appreciate the possession of so  
 “ affectionate a heart. I will be contented to live in any part  
 “ of the world with you, and under all circumstances ; it is alike  
 “ indifferent to me what part of this world, or in what situation,  
 “ provided you are with me. How are you to write me, dearest ?  
 “ Tell sweet Jemima to write, and you can put a letter inside.  
 “ I only ask you to say that you are satisfied with me. I repose  
 “ with implicit confidence on the fidelity of your heart. Tell  
 “ me, my Betsy, if you think there is any likelihood of the event  
 “ which you and I talked about taking place. If so, you must  
 “ come directly. I must be with you to comfort and soothe  
 “ you, and to partake of the joys such an event will excite.  
 “ You can easily manage to leave Smyllum, by assigning the  
 “ excuse which you mentioned to me. How is your health, my  
 “ beloved wife ? \* Take care of it ; and pray do not, as you are  
 “ too apt, trifle with that which so ultimately constitutes your  
 “ own happiness and mine. If you are not very, very fat,  
 “ when we meet, I shall be much mortified. If you love me,  
 “ dearest, get fat. It is the only thing wanting to make you all  
 “ I can wish. I dread a discovery of this epistle. Write me  
 “ the family movements, and inform me when they return.  
 “ Oh ! how much I long to be with you ! It is the only thing  
 “ that I have to look forward to that cheers my forlorn heart.  
 “ Farewell ; every blessing be with you, my ever dearest and  
 “ affectionate [*torn*]

“ Your ever unalterable, sincerely attached, and affectionate,  
 “ R. B. J. H.”

In June of the same year (1814) the pursuer was delivered at Smyllum Park of her first child. She had adopted such careful precautions as to succeed in concealing her pregnancy from the family, and she delivered herself without the circumstance being known to any one in the house. Within twenty-four hours thereafter she took the child to Edinburgh, and placed it with a nurse, and then returned to Smyllum Park. She stated, that

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\* The vitiated expression.

the reason for the concealment of the marriage, and of the birth of this child, was the belief which the defender had impressed upon her, that if the marriage were discovered, his father would instantly disinherit him. March 3, 1831.

Towards the end of that year she left Smyllum Park, after having been there for nearly six years and a half. It was proved that she had realized about £400. She went early in 1815 to visit a friend near Inverary; and the defender, being in Edinburgh, addressed her in February of that year the following letters:—

“ My darling Eliza,—You, no doubt, think that I have been  
 “ forgetful of you ; I can assure you, however, that it is not so.  
 “ I have been vexed and agonized since we parted, and have  
 “ only one wish—to see you once again. I hear you intend  
 “ remaining at Inverary until May. Should such be your  
 “ intention, a long time must elapse before we meet. I will say  
 “ no more until I hear from you, and entreat you to write me  
 “ a single line, saying if there be any prospect of our soon  
 “ meeting. R. B. J. HONYMAN.

“ You had better address your letter to R. Johnston, Fortune’s  
 “ Hotel, Prince’s Street.”

“ I can only say, my dearest Eliza, if you think I am not the  
 “ same to you that ever I was, you judge me wrong. I have  
 “ the same feelings of affection for you that ever I had ; and  
 “ although my long silence might have led some, under similar  
 “ circumstances, to suppose that I had not acted up to what I  
 “ professed, I never believed it possible that you could doubt  
 “ the sincerity of my regard, unless explicitly avowed by myself.  
 “ When can I see you ? I intend going to Glasgow on Monday.  
 “ Write me, addressed to the Black Bull, to be kept until called  
 “ for. Tell me, my love, if we can meet, and where. I will come  
 “ to Inverary. Indeed, my only motive for going to Glasgow  
 “ is to be nearer you, in the hope that you can make some  
 “ arrangement for our meeting. I go to London soon, and  
 “ anticipated the happiness of seeing all the schemes we had  
 “ formed realized. Tuesday at farthest I shall be at Glasgow,  
 “ and I could easily come on to Inverary or near it. Write, how-  
 “ ever, to Glasgow. I must see you. Write guardedly, affix  
 “ no signature, and let the letter be unintelligible to any one  
 “ but myself.

“ Farewell, my darling Eliza. Expecting to meet you soon,  
 “ I will say no more. Yours unalterably, R. B. J. H.”

March 3, 1831.

He afterwards set out for Inverary, and, on his arrival at Cairndow (in the neighbourhood), addressed to her this letter:—

“Cairndow, Thursday. .

“Dear Miss Campbell,—I intended myself the pleasure of  
 “seeing you at Inverary on a walking excursion which I had  
 “undertaken; but having met with a misfortune which all pe-  
 “destrians are liable to, I am compelled to relinquish that  
 “pleasure. The accident to which I allude is an injury which  
 “I have sustained in the tendon of one of my legs, which ren-  
 “ders me incapable of moving. This will be delivered to you  
 “by a Highlander, whom I have instructed to procure me some  
 “mode of conveyance back to Dumbarton. I am aware that  
 “this epistle is unnecessary. It, however, will serve to evince  
 “my intentions had I reached Inverary. Believe me, yours  
 “truly,  
 R. B. J. HONYMAN.”

“To Miss Campbell, Captain }  
 Campbell’s, Inverary.” }

She soon thereafter came to Edinburgh, where their intercourse was renewed; and having again become pregnant, she, to avoid discovery, left her aunt’s and went to York, where she was delivered, in June 1816, of her second child.

Between this period and 1821 there did not appear to have been any intercourse between them; and she stated that, in the meanwhile, she supported herself and children by the funds which she had realized by her own industry, and by the assistance of her aunt, who died in 1821. In October of that year she wrote to the defender a letter, which, however, he afterwards destroyed; and, in answer to it, he sent the following from Smyllum Park:—

“I have received the letter from Mound ———. I  
 “should have answered it much sooner, but have been confined  
 “until to-day to the house. My feelings to the person I alluded  
 “to are the same as ever. I hope some day soon to be able to  
 “reimburse them for the expense they have been at. A small  
 “parcel by the coach on Monday will reach me without, I hope,  
 “exciting suspicion. I am impatient to hear, and should rejoice  
 “once more to see

“Ever

I hope to be in Edinburgh in a fortnight. Seal the parcel.”

He accordingly visited her, and their intercourse was renewed and continued till the end of 1823. During that period the two

following notes, one dated in October 1822, and the other in March 3, 1831. June 1823, were written by him to her:—

“ It will not be possible for me to be in Edinburgh to-morrow  
“ or Saturday. This I am sorry for; it will be some day of the  
“ week after the next.”

“ I write this to say I will be in Edinburgh on Monday night.  
“ I will see you at half-past ten on that evening. Yours ever.”

He alleged that about the end of 1823 he went abroad, where he continued till June 1824. During this period he had no communication with her, nor did he contribute any support either to her or her children.

In the meanwhile her funds were exhausted; and having contracted debt, and been unable to pay her rent, she was, in May 1824, thrown into prison, and her effects sold off by public roup. Among these it was proved that there was an escritoire containing various loose papers, which she alleged were letters from the defender, but these could not now be found.

Under the belief that the defender was at Smyllum Park, and his father being still alive, she wrote to him on the 10th the following letter, the words of which are inverted:—

“ Rof dog ekas emoc ot nwot eht tnemom uoy eviecer siht—fi  
“ uoy od ton, eht secneuquesnoc yam eb tsom elbaeergasid ot  
“ flesruoy—yreve gniht sah deripsnart htiw drager ot eht —  
“ —, dna a nosrep si ot tiaw nopu uoy eht gninnigeb fo eht keew  
“ no rieht tnuocca. Siht yam eb detneverp yb ruoy gnimoc ot  
“ nwot. Tisi ytissecen taht sah edam em etirw, tub o od emoc.”\*

“ Addressed R. B. J. Honnyman Esq. }  
Smyllum Park, Lanark.” }

It appeared, that under the circumstances in which she was placed she had been compelled to disclose to her brother-in-law the position in which she stood with the defender; and in con-

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\* EXPLANATION.

For God sake come to town the moment you receive this,—if you do not, the consequences may be most disagreeable to yourself;—every thing has transpired with regard to the ———, and a person is to wait upon you the beginning of the week on their account. This may be prevented by your coming to town. It is necessity that has made me write, but O do come.



March 3, 1831. sequence her brother-in-law wrote to him a letter, stating that except for her solicitations he would have waited on him, and if no answer were returned, other measures must be immediately resorted to. On the following day she wrote to the defender:—

“ Is it possible that you do not mean either to write or come?  
 “ I am in confinement, and to-morrow your —— will be left  
 “ without a home, without one who will bestow the common  
 “ necessaries of life on —— . I have had much to do to  
 “ prevent my brother being with you this week. I could not,  
 “ however, prevent him writing to you, which I am informed  
 “ this morning he has done. O do not blame me. Could you  
 “ look into my mind, and see what I suffer, I doubt not but you  
 “ would alleviate my misery, at least if you possess the same  
 “ goodness of heart you once did. O think of your chil—— .  
 “ Think what must be —— fate. Think of what I  
 “ must have suffered ere I was brought here. Do, for mercy’s  
 “ sake, come or write immediately. Address Mrs. Laing, Calton  
 “ Hill Jail.

“ Friday evening.”

“ For God’s sake do try some means to assist me. My poor  
 “ —— this day without a home. What is to become of  
 “ them? I think reason is on the point of forsaking me. O  
 “ would to God that the grave would shelter me, and all that  
 “ belongs to me! I cannot write; I cannot think. O have mercy  
 “ upon me, and try to lessen the miseries that surround me.

“ Saturday morning.”

Again, on the 3d of July, she wrote to him:—

“ Your children are starving, and almost naked, going about  
 “ without a shoe on their poor feet. Is it possible you can know  
 “ this, and not do something for them? The smallest supply  
 “ would be thankfully received on their account; and unless it  
 “ be quickly, God only knows what is to become of them. They  
 “ are at present a burden on the meagre bounty of those who  
 “ can ill afford a morsel for their own children, and who cannot  
 “ be expected, were they ever so willing, to be able to do it  
 “ any longer. Oh! think but for a moment of their situation,  
 “ and surely your heart cannot but pity, and your hand assist  
 “ them. There is no matter how small the sum; little will sup-  
 “ ply their present wants. Do send them something by the  
 “ coach of Monday, addressed to A. George, No. 5, Murray

“ Street, Crosscauseway. Od rof snevaeh ekas dnes meht gniht- March 3, 1831.  
 “ emos, ro yeht tsum eid rof tnaw, ro teem htiw na ylemitnu  
 “ evarg. Tahw a lufdaerd thguoht, tahw a lufdaerd dne retfa  
 “ lla taht sah neeb dereffus rof meht. [*Explanation of last sen-*  
 “ *tence* :—Do, for heaven’s sake, send them something, or they  
 “ must die for want, or meet with an untimely grave. What a  
 “ dreadful thought ! what a dreadful end ! after all that has been  
 “ suffered for them.]

“ Anxiously will Monday’s coach be looked for. How they  
 “ are to subsist till then I know not ; but may God temper the  
 “ wind to the shorn lamb. Oh ! need more be said to make you  
 “ feel ? No ; for after what has been said, if you give them no  
 “ assistance, this world with them will soon be at an end.

“ Saturday morning, 6 o’clock.”

He returned her this answer on the 5th :—

“ It is your fault ; why do you not see the gentleman who has  
 “ undertaken, on my part, to make arrangements for the chil-  
 “ dren. Tell the woman in James’ Square that you will meet  
 “ him, and he will fix a time. This must be done immediately.  
 “ I send five pounds for them, and shall not send any thing  
 “ more until a settlement takes place.

“ Indiscreet woman, to send your letter wafered with a dry  
 “ wafer.”

The gentleman here alluded to was the defender’s law agent, to whom he had committed the management of the matter. On the 14th the pursuer wrote to the defender this letter :—

“ SIR,—However painful it may be for me to address you  
 “ on the subject that is to form the contents of this letter, I  
 “ feel I ought,—and have been urged—strongly urged—to lay  
 “ before you many circumstances, of which I am aware that, if  
 “ you choose to apply to memory, you must acknowledge as  
 “ facts. There are other circumstances of which you are not  
 “ aware, which shall be communicated to you, and which I am  
 “ assured—by those who have a much better knowledge of the  
 “ importance of what has already been submitted to their inspec-  
 “ tion than I ever had—will give myself and children a title to  
 “ your name, and force you to give a settlement adequate to the  
 “ situation you hold in life.

March 3, 1831.

“ Oh, Dick ! how pained, how agonized do I feel, to be  
 “ forced to address you in the manner I have done, and am  
 “ about to do — you, whom I have worshipped, as having the  
 “ tenderest affections and the best of hearts ! Am I at last to be  
 “ compelled to know I have, like all other idolators, wor-  
 “ shipped an empty image, that has deceived me, and left  
 “ me to the only true God’s punishing hand. Oh, Dick ! let  
 “ me entreat of you to believe that it was with the greatest reluc-  
 “ tance, and under circumstances of the most distressing nature,  
 “ that ever induced me to give into the hands of any one the  
 “ papers, and a knowledge of what had passed between us.  
 “ You know how much I have suffered for you, and how silent  
 “ and unrepining I have been ; and I am sure you think I  
 “ would have continued to do so, could I have seen a possibility  
 “ of keeping your dear children from literal starvation. I am  
 “ now to bring under your eye events of more than eleven years  
 “ standing. You must know the manner in which you came to  
 “ me on the morning of the 20th June 1813, at Smyllum Park,  
 “ between the hours of one and two A.M.—how you solicited,  
 “ how you entreated, that I would consent to your wishes, and  
 “ that the very first opportunity you had of leaving Smyllum,  
 “ and I the same, you would legally make me your wife. When  
 “ I resisted your entreaties, you said, Why should I?—could  
 “ I not depend upon your honour ? and that no one could pos-  
 “ sibly know what had passed between us. My answer to you  
 “ was, I believe I may depend upon your honour ; but were  
 “ every eye shut, every ear closed, and every tongue silent,  
 “ much and dearly as I love you, I should know the circum-  
 “ stance myself, and that would be sufficient to make me mise-  
 “ rable (and you know how miserable I soon was). You know  
 “ how you begged, how you entreated after this, and assured me  
 “ that you was now incapable of injuring your own honour or  
 “ mine. Next morning you left Smyllum for Edinburgh,—  
 “ you may recollect upon what errand. You returned to  
 “ Smyllum upon the 24th, came in the evening to the school-  
 “ room, between the hours of six and seven o’clock, and en-  
 “ treated that I would consent to our being married. I an-  
 “ swered, that I never would hesitate to become your wife —  
 “ you to whom every affection of my heart had been long dedi-  
 “ cated ; but what a sacrifice was you making in the eyes of  
 “ your friends and relations, for I could neither offer you

“ fortune nor connexions, however respectable mine were, that      March 3, 1831.  
 “ they deemed necessary for your wife. Your answer to me was;  
 “ Damn my relations — I am to consult my own happiness, not  
 “ theirs. You then said, Am I to call you my wife?—You  
 “ may. Do, then, my beloved wife, let me hear you call me  
 “ husband.—Dearest, dearest Dick, you are my husband. You  
 “ know that, when your affections and feelings are interested,  
 “ in what a strenuous manner you can speak, and that it is not  
 “ the boundaries of a small room that will keep secret your  
 “ voice or words when agitated.—(Mark what follows)—There  
 “ was one of your own family an ear-witness of what then  
 “ passed, and in consequence of which I have a letter addressed  
 “ to me some months afterwards, in one part of which she calls  
 “ me her dear sister, and in another her dear Lady Dicky.  
 “ So much can I depend upon her honour, that I feel perfectly  
 “ certain, had I nothing under her own hand to substantiate the  
 “ fact, that were she put to her oath, she never, for one moment,  
 “ would hesitate to affirm what she asserted to my late aunt,  
 “ in presence of your mother and sisters, that she was sure I  
 “ was your wife, and which was distinctly heard by another  
 “ witness now in life. There are also two other witnesses who  
 “ can assert in what terms they have heard you name me, at a  
 “ period much antecedent to the above-mentioned. How little  
 “ was I then aware, that what passed between us was to be of  
 “ such essential service to myself and children eleven years  
 “ afterwards, and how impossible it would have been for any  
 “ one to persuade me at that time that my beloved Dick was  
 “ other than truth and honour itself. Cruel, cruel change, that  
 “ has made this letter necessary to you! I have given all your  
 “ letters into the hands of one who will use them prudently for  
 “ me—letters wherein my own claim is placed beyond a doubt,  
 “ and one letter, bearing date November 1st, 1821, in which  
 “ you acknowledge the great expense I have been at in sup-  
 “ porting your children for such a number of years, and that  
 “ you would be in Edinburgh a fortnight after and see me;  
 “ but that fortnight never came. In September 1822 I went  
 “ to within a short distance of Smyllum Park. I wandered  
 “ about the whole afternoon and a part of the night, until my  
 “ wearied limbs could no longer support me, and I lay down at  
 “ the foot of one of your father’s hay-stacks. Early in the  
 “ morning I again resumed my wanderings, and was, as I

March 3, 1831. “ thought, fortunate enough to meet you. I then told you,  
“ I could no longer support your children, and that you must  
“ do something for them. You then proposed boarding them  
“ somewhere; but where that was to be, or who was to pay  
“ their board, you would give no information; and, I believe,  
“ merely to get quit of my importunities, you promised to see  
“ me in Edinburgh in twelve or thirteen days after. This period  
“ was lengthened out to twenty-seven days. You then came;  
“ but what was the result of that meeting? You went away  
“ without giving any thing to your children, and without pro-  
“ mising to give any thing towards their future support. Many  
“ interviews have taken place since that time; but still nothing  
“ was given or promised for their support, unless you meant to  
“ constitute two pound-notes you gave them on the 4th De-  
“ cember 1822, and two sovereigns on your return from Hartle-  
“ pool a few months afterwards, a sufficient reimbursement for years  
“ that had passed, and have since passed. If that was your idea,  
“ you will find that you have been mistaken. You have thought  
“ fit, through the medium of Mr. Hamilton, to assert that I had  
“ received from you, for the benefit of your children, much  
“ above £100. You know how incorrect this statement is.  
“ You know how and in what manner Elizabeth was brought  
“ into this world, and that in seventeen hours afterwards I left  
“ Smyllum for Edinburgh with her, naked as she was born.  
“ You know that I was fortunate enough to find a nurse for her,  
“ at which nurse’s, I, at my own expense, kept her for eighteen  
“ months, and found her in every article of clothing, and every  
“ incidental expense that was incurred. I shall have no hesi-  
“ tation in affirming most solemnly, at any time, that from the  
“ day of Elizabeth’s birth, on the 27th of May 1814, and that  
“ of her sister Alexa, on the 27th of May 1816, I never re-  
“ ceived one sixpence for ten years for their support. You  
“ cannot have forgot what passed relative to them last January,  
“ when I made you fully acquainted with my own situation,  
“ and that it was impossible for me to find them in food,  
“ clothing, and a home any longer; and that had it not been  
“ for the late Mrs. Gilchrist, who lent me, from time to time,  
“ considerable sums of money, they must, long ere that time,  
“ have been begging from door to door. You seemed to feel,  
“ sincerely feel, the misery of our situation; but still nothing  
“ was done to mitigate that misery. Since that time I have

“ been at Smyllum—I have written, others have written, but March 3, 1831.”  
 “ all applications, until a short time back, have been neglected.  
 “ I have been forced to be thus circumstantial, as a copy of what  
 “ is now submitted to your eye must be given into other hands,  
 “ and thankful I am my painful task is so near an end. You  
 “ may depend upon it, the preceding contents of this letter  
 “ have not been written with a view of interesting your feelings.  
 “ I know my own rights, and will never attempt to ask as a  
 “ favour what I can command. Was it not refined cruelty to  
 “ force me to an interview with a stranger—to make me the  
 “ gazing-stock of one who could not be interested in my fate?  
 “ and, you may depend upon it, I never shall consent to another  
 “ meeting. Mr. Hamilton cannot arrange the business that is  
 “ between us; and whatever may be your determination after  
 “ a perusal of this letter must be addressed to Mrs. Wilson,  
 “ or to myself to her care. She, deeply as she is already in-  
 “ volved, will be my friend, and, being both able and willing,  
 “ I cannot be too thankful that such a friend is still left me.  
 “ I shall have no hesitation in permitting a copy of this letter  
 “ to be sent to your father, which will be done in a very short  
 “ time; but I wished it first to be addressed to yourself.—In  
 “ the meantime, believe me, &c.

“ ELIZABETH HONYMAN.”

The defender transmitted this letter to his agent, accompanied by one in these terms:—

“ My dear Hamilton,—The accompanying letter abounds  
 “ with lies from beginning to end—not one word of truth in it.  
 “ I send it for your edification and perusal. Jemima says she  
 “ can swear no such conversation was ever held, and she never  
 “ said or thought that this Miss C. was my wife. I wish you would  
 “ write me, and do something. Suppose I wished to be married  
 “ to-morrow, what could I do? Here is a bitch of a woman who  
 “ says what she cannot prove; but still it places me, with the  
 “ anxious feelings I have, in a very uncomfortable situation.  
 “ Would you have me come in?

“ R. B. J. HONYMAN.”

During her confinement in prison she had been compelled to disclose to Mrs. Wilson (who was one of her creditors) her claims upon the defender, and a communication was in conse-

March 3, 1831.

quence opened between Mrs. Wilson and the defender, in the course of which she 'made statements (as he alleged), as to what had passed between her and the pursuer, inconsistent with those made judicially by the pursuer. In consequence, Mrs. Wilson was examined as a witness, and emitted this deposition :—

“ Interrogated, If she recollects of the pursuer living in a  
 “ house in Mound Place? depones and answers, Yes, I do. I  
 “ was at that time residing in Lancashire, and I came to visit  
 “ my mother in Edinburgh, and visited the pursuer when living  
 “ in Mrs. Cunningham’s house in Mound Place. Interrogated,  
 “ In what year that was? depones and answers, It would be  
 “ three years previous to 1824, but I cannot recall it more par-  
 “ ticularly to my recollection, unless I was at home. Interro-  
 “ gated, If there were any children in family with the pursuer  
 “ when she visited her in Mrs. Cunningham’s house in Mound  
 “ Place? depones and answers, Yes, there were two—two girls.  
 “ Interrogated, If she the deponent made any inquiries at the  
 “ pursuer about these children? depones and answers, No; I  
 “ understood they were two children she had the charge of.  
 “ Interrogated, When the deponent discovered that these two  
 “ children were the pursuer’s children? depones and answers, It  
 “ was in 1824, when I came to attend my mother on her death-  
 “ bed. Interrogated, Where the pursuer was living at that  
 “ time? depones and answers, My first interview with her was in  
 “ the jail on the Calton Hill. Interrogated, If the deponent  
 “ made any inquiries at the pursuer respecting the two children  
 “ when she saw her in the jail? depones, I did. During my  
 “ attendance on my mother, I saw she was particularly distressed  
 “ about a loan of money she had made, which was likely to be  
 “ hurtful to my interest; and from what I learned, I took an  
 “ opportunity, without my mother’s knowledge, of going to the  
 “ jail, and when there, and conversing with the pursuer, I  
 “ thought myself entitled to ask her whose children the two  
 “ were, my mother having to my knowledge advanced about  
 “ £160 to her. The pursuer was particularly distressed, and  
 “ said that she could not answer that question, and said that she  
 “ was bound in such a manner not to do it, although she ad-  
 “ mitted I was well entitled to put the question. Although much  
 “ distressed at seeing her in the situation she was in, I still  
 “ insisted that she should give me some answer; but she said, if

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“ I would wait a few days, she would write to the person inter-  
 “ rested, and get permission to do so ; and she promised, if she  
 “ did not get an answer in the time fixed upon, she would take  
 “ upon her to communicate it to me. Interrogated, depones, I  
 “ returned to the pursuer in three or four days. Interrogated,  
 “ If the pursuer then made any disclosure respecting the chil-  
 “ dren to the deponent ? depones, Yes, she did ; she said to me  
 “ she supposed I was come to demand an explanation ; and I said  
 “ I was. She answered, that she had written several letters  
 “ previously at different times, but had got no answer, either to  
 “ the previous letters, or to the one she had written by my  
 “ desire. I then renewed my former question, whom these  
 “ children belonged to, and she answered, they were hers. I  
 “ asked her who their father was, and she mentioned they were  
 “ Mr. Honyman’s. I then expressed my disapprobation of her  
 “ having brought herself into the degraded situation of having  
 “ had repeated children to the same person ; when she, with all  
 “ the appearance of dignified innocence, said, I was not to take  
 “ it in that view—they would never have been there in that  
 “ way ; that she did not consider herself in any degraded situa-  
 “ tion. From what she said, and her manner (for there was as  
 “ much conveyed in her manner as her words), I then imme-  
 “ diately implied that she was married ; and I said to her, as I  
 “ think my words were, ‘ There has been a marriage ? ’ to which  
 “ she seemed to nod assent, but made no reply. I then asked  
 “ her when it had taken place, and she answered the year, but I  
 “ cannot recollect whether she mentioned the year 1811 or 1812.  
 “ Interrogated, If any farther conversation passed ? depones, I  
 “ put it to her, if she was Mr. Honyman’s wife, why she was in  
 “ that awkward situation of being in so poor a lodging,—for she  
 “ had left the jail ; and she answered, that Mr. Honyman was  
 “ entirely dependent upon his father, and that the marriage could  
 “ not be acknowledged in his father’s lifetime, or words to that  
 “ purpose. There was some conversation also passed betwixt us  
 “ regarding the pursuer not having got any answers to her letters,  
 “ and I asked her if it would have any effect for me to write to  
 “ Mr. Honyman. She answered, perhaps it might ; and if I  
 “ chose to do so, she would give me the address, which she did.  
 “ Interrogated, If the deponent wrote to Mr. Honyman ? de-  
 “ pones, Yes ; I wrote a short note requesting a personal inter-  
 “ view with Mr. Honyman. Interrogated, If she got any



March 3, 1831. “ answer? depones and answers, No. After several weeks had  
 “ elapsed, Mr. Honyman called upon me in the evening, between  
 “ nine and ten o’clock, accompanied by that gentleman (*pointing*  
 “ *to Mr. Hamilton*), whom I now see in Court. Interrogated,  
 “ What passed? depones, Mr. Honyman asked me if I had not  
 “ written him a note; I said I had; and when Mr. Hamilton  
 “ apologized for Mr. Honyman not having sent an answer, saying,  
 “ as I think, that Mr. Honyman had been in France, I then said  
 “ that I had requested a personal interview, having a communi-  
 “ cation to make to himself, signifying that Mr. Hamilton should  
 “ withdraw; to which Mr. Honyman replied, I was at perfect  
 “ liberty to make it before Mr. Hamilton. I then said I had no  
 “ hesitation to do so; that it was regarding a claim of a particular  
 “ nature that a lady, a Miss Campbell, had upon him; and he  
 “ admitted that he was acquainted with the lady. I then said  
 “ I understood she was married to him; and as she was his wife,  
 “ I considered I had a claim upon him for the money my mother  
 “ had advanced to the pursuer; and I mentioned the state of  
 “ health my mother was then in, and as her representative I  
 “ made the demand upon him; to which Mr. Honyman answered,  
 “ she was not his wife; and I continued to press upon Mr. Ho-  
 “ nyman, from the impression made upon my mind by the  
 “ pursuer in my communications with her, that there was a  
 “ marriage; and I urged it upon him, feeling quite certain that  
 “ it was so; but Mr. Honyman still denied it. I then said to  
 “ him, Perhaps, then, you will not acknowledge the children; to  
 “ which he answered, Oh, yes, they were his. And Mr. Hamil-  
 “ ton asked me where Miss Campbell was, as they wished to see  
 “ her, relative to settling some matters with her. I answered, I  
 “ did not know then where she was, but I should endeavour to  
 “ find out; and it was agreed I should do so; and that she, the  
 “ pursuer, was to meet Mr. Honyman and Mr. Hamilton in my  
 “ house on the Tuesday evening, as requested by them. The  
 “ person I employed to find her out sent her to me on the  
 “ Monday evening, and I told her what had passed betwixt  
 “ Mr. Honyman and Mr. Hamilton and me. Interrogated, What  
 “ passed betwixt the deponent and the pursuer when she gave  
 “ her this information? depones and answers, It threw her into  
 “ an agony of grief, and she expressed the greatest surprise.  
 “ After some time she recovered a little. She said, Then I sup-  
 “ pose he denies the children also; he may do the one as well as

“ the other. Those were pretty nearly her words. And she then March 3, 1831.  
 “ said, if I saw the letters that had passed betwixt them, it would  
 “ corroborate what she had told me; and, from what had passed  
 “ betwixt Mr. Honyman and me, I certainly desired to see  
 “ them; and when she brought them, and gave them me to read,  
 “ she said, at the same time, that there were other letters much  
 “ stronger than these, from Mr. Honyman to the pursuer, that  
 “ were either lost or left at the time of the sale of her furniture,  
 “ as her servant had only brought her papers in a very confused  
 “ way, or she thought it very likely they may be in the trunk  
 “ which had been arrested, and left locked in the jail. And she  
 “ mentioned, that in one of these letters, which she said was from  
 “ Mr. Honyman’s sister, Miss Jemima, to her, she (the pursuer)  
 “ was addressed ‘ Lady Dicky,’ and in two or three places her  
 “ ‘ dear sister.’ Interrogated, If, when the deponent informed  
 “ the pursuer of the conversation she had had with Mr. Hony-  
 “ man, in which he denied the marriage, the agony of grief  
 “ appeared to be put on or affected? depones and answers, No,  
 “ it could hardly be so. Interrogated, How she is enabled to  
 “ recollect the exact date of the interview betwixt Mr. Honyman  
 “ and Mr. Hamilton and the deponent? depones, My mother  
 “ died on the 28th of June 1824, and these gentlemen called on  
 “ the Saturday evening preceding her death. Interrogated, If  
 “ she had said to Mr. Honyman, at the time of this conversation,  
 “ that the pursuer had told her she had been married by an  
 “ English clergyman? depones and answers, No. Interrogated,  
 “ If she said she had been married by any clergyman? depones  
 “ and answers, No. Interrogated, If she, the deponent, supposed  
 “ there had been a marriage by an English clergyman? depones  
 “ and answers, When she first gave me to understand she  
 “ was married to Mr. Honyman, and mentioned that it had  
 “ taken place in the year, as I have said, either in 1811 or 1812,  
 “ I recollected she had been in London about that time, and I  
 “ knew she had two cousins of her aunt’s, clergymen, one of  
 “ them settled in London, and I supposed she might have been  
 “ married by one of them; and I asked her if the ceremony was  
 “ performed by one of the Mr. Durhams—those were my ex-  
 “ press words, I think. She smiled and said, I see you are  
 “ determined to know all. She made me no further reply than  
 “ that. Interrogated, If the pursuer ever said to the deponent  
 “ that she could bring the clergyman to confirm her statement?

March 3, 1831. “ depones and answers, No. And she adds, in the conversation  
“ I had with Mr. Honyman and Mr. Hamilton, from this im-  
“ pression being upon my mind, I said I thought I could know  
“ in a few posts. Interrogated, If the deponent ever stated to  
“ Mr. Hamilton, the defender’s agent, that she had discovered  
“ the pursuer’s statement to be false, and that she had come to  
“ the conclusion that no reliance could be placed on her veracity?  
“ depones and answers, No. Interrogated, If any thing has  
“ occurred since that time to change the deponent’s impression  
“ that the pursuer’s statement was true, and that the parties were  
“ married persons? depones and answers, No; I still have the  
“ same opinion I formed then. Cross-interrogated, If she has  
“ read any of the papers or pleadings in this case? depones and  
“ answers, I saw one, I think. I think, if I recollect right, it  
“ was a printed paper, drawn by Mr. More, and some years  
“ ago. Interrogated, If it was in 1827? depones and answers,  
“ I think it was about two years ago; and being shown the  
“ revised memorial, depones and answers, I think that is the  
“ paper. Interrogated, depones, The pursuer brought that  
“ paper to me. Interrogated, If she considers she has any inte-  
“ rest in the decision of this case, depones and answers, Nothing  
“ but what appears on the face of this evidence. Interrogated,  
“ If the debt of £160 is paid? depones and answers, No.  
“ Interrogated, If, in the conversation she had with Mr. Hamil-  
“ ton and Mr. Honyman, she said she could in a few posts hear  
“ from the clergyman who married them? depones and answers,  
“ To the best of my recollection I did not make use of the word  
“ ‘ clergyman.’ From the impression upon my mind, as already  
“ mentioned, owing to her aunt’s cousins being clergymen, I  
“ urged it very strongly on Mr. Honyman that he was married,  
“ but I do not think I said he was married by a clergyman.  
“ Interrogated, If, in any subsequent communications which she  
“ had with Miss Campbell, or from what she had learned, she  
“ came to place less confidence in Miss Campbell’s statements  
“ than she had done at first? depones and answers, In the con-  
“ versation I had with Mr. Honyman he so confidently denied  
“ his marriage that I was staggered; but after I had seen and  
“ read the letters, which was after my interview with Mr. Ha-  
“ milton, these letters seemed so strong that my impression in  
“ favour of the pursuer’s statement returned to what it originally  
“ had been.”

The last letter which the pursuer addressed to the defender March 3, 1831. was on the 25th of December, and in these terms:—

“ Sir,—I did not think any thing could have induced me to  
 “ write to you again ; but, alas ! the wants of two poor little  
 “ creatures compel me to it ; far less did I think that the busi-  
 “ ness now pending would have been so long of being decided.  
 “ I ask for nothing for myself. I merely ask for a small sum to  
 “ supply their present great want. They have passed this day  
 “ without food, and are likely to do the same to-morrow. The  
 “ only means I have now in my power to avert starvation is to  
 “ beg from door to door for them ; and the most likely conse-  
 “ quence is, that I shall be sent to the police, where I must give  
 “ an account of what has reduced myself and them to such want.  
 “ I cannot possibly think you would like to have your neglect  
 “ of them made so public. I would not have made this appli-  
 “ cation, but I have wearied out the few friends I have, begging  
 “ for them. I lay myself out of the question ; for I have  
 “ worked more in the last few months than would have been  
 “ sufficient to keep me comfortable. How can you be so  
 “ unfeeling to them, however much you may wish to punish  
 “ me ? Surely they are innocent. My mind is often in a state  
 “ of madness. I wander the street without knowing whither  
 “ I am going. And, O ! what dreadful thoughts often possess  
 “ it. When I look from my window, and see the broad sea  
 “ before me, I think how soon might all our miseries be at an  
 “ end. But, O ! blessed be God, my soul has yet been kept  
 “ from the dreadful crime of murder. May his power preserve  
 “ my soul from such a crime. I now humble myself to beg  
 “ from you for them ; and if you do not send something by  
 “ Monday’s coach, do not blame me for what may be the con-  
 “ sequence, for I am nearly distracted. You may address your  
 “ parcel, as you did the last, to A. George, Murray Street,  
 “ Crosscauseway. It must be carriage-paid, for I have nothing.”

The defender took no notice of this letter, and wrote to his agent:—

“ My dear Hamilton,—I intend mentioning the whole affair  
 “ to my father. No arrangement shall I come to until the  
 “ claims which Miss Campbell asserts she possesses are sub-  
 “ stantiated in a court of justice, or given up. I cannot charge

March 3, 1831. " my memory with having at any time given her the slightest  
 " ground, in words or writing, for taking the name she has  
 " done. I write this in haste, in order you may be able to  
 " communicate my intentions to Mr. C. before he leaves Scot-  
 " land. Ever yours, &c. " R. B. J. HONYMAN."

He accordingly informed his father; and on the death of the latter, which happened soon afterwards, the pursuer and her two children brought their action.

The Commissaries, on advising the proof, on the 11th of July 1828, decerned in the conclusions for declarator of marriage, adherence, and legitimacy, and found expenses due. The defender having complained by bill of advocation to the Court of Session, their Lordships, on the 7th of July 1829, recalled the interlocutor, and remitted to the Commissaries to allow farther proof, and thereafter do as should be just. A great part of the evidence already alluded to was in consequence adduced; and, on resuming consideration, the Commissaries, on the 26th of February 1830, again decerned in the above declaratory conclusions, and found expenses due. \*

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\* The following opinions were at this time delivered by the Commissaries:

*Mr. Com. George Ross.*— We formerly gave our very deliberate opinions upon this case. The Court above, upon considering our judgment, recalled it in the meantime, to the effect of admitting additional proof, and remitted the case to us for the purpose of reviewing it. That proof has been taken, in obedience to the appointment of the Supreme Court, and the only point we have now to consider is, how far the additional proof so taken can in any way alter or affect the judgment formerly pronounced.

In order to make up my mind upon this point, I have again gone carefully over the whole proof; and upon the proof as it originally stood, I continue decidedly of the opinion which I formerly expressed. The case hinges upon the correspondence which passed between the parties—mainly upon three letters of the first series; and in judging of the import and effect of that correspondence, there is one important question which ought never to be lost sight of, viz. Were the intentions of the parties in writing these letters of an honourable or a dishonourable nature? The defender is now anxious to represent his own conduct in the most dishonourable light, and in doing so he indulges in a strain of levity and gaiety ill becoming the serious nature of his offence, and the decorum which ought to be observed in a court of justice. If the defender, throughout the correspondence before us, were guilty of the intentions he now attributes to himself, I know no terms strong enough to express my reprobation of his conduct. But I do not believe the defender in this matter; and the correspondence itself proves to my satisfaction that he was sincere and honourable in his intentions at the time when he wrote the letters, and in that light the pursuer was entitled to understand his conduct, and to rely upon it.

The defender then presented another bill of advocation, but March 3, 1851.

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Another observation of great importance in this case is, that the counterpart of the defender's letters do not appear. And why not? It is only because the letters have been destroyed by the act of the defender himself. He says, indeed, that he destroyed them, because he considered them of no value; and yet he had kept them for a period of ten years, and then destroyed them at the very time when the pursuer was advancing the claim which was followed up by the present action. In such circumstances we should do injustice to the pursuer, if we did not hold the presumption that her letters, had they not been so destroyed, would have strengthened and confirmed the evidence afforded by the defender's letters now before us.

And now, with regard to the additional evidence, there is not a great deal of it, and of what there is, little is of a direct kind, but it certainly goes to confirm some of the statements formerly made by the pursuer. She had stated that there at one time were other letters in her possession, which had been lost under circumstances of a very painful nature, to which she referred; and it is now distinctly proved that she was hurried away to jail, and that, with her other articles of furniture, her escritoire, containing papers, was roused and sold in her absence. And when it is considered that the pursuer was reduced to this extremity of wretchedness, and subjected to this risk of loss, solely in consequence of the defender refusing to answer her urgent calls for relief, contained in the heart-rending letters before us, until he should extort certain terms from the pursuer, it is difficult not to allow some weight to the pursuer's statements respecting the papers said to have been lost in these circumstances; but there is no occasion to rest any weight upon such considerations; there is sufficient evidence actually before us. The law applicable to the case is the same as was laid down in the case of Lindsay, and the evidence is amply sufficient to support our former judgment.

*Mr. Charles Ross.*—I continue of the opinion I formerly expressed, that there is here evidence of a marriage. The additional proof is of very little weight, but certainly it rather tends to confirm the pursuer's case.

*Mr. Tod.*—I was formerly the only dissentient from the judgment of this Court, and I delivered my opinion on that occasion with the utmost hesitation, and under the strongest moral conviction that there had been a marriage between these parties. Upon reconsidering the whole case again with the utmost care, I have seen reason to join in the opinion of the majority. One very important feature of the case is to be found in the favourable circumstances in which the pursuer presents herself. Throughout a long series of the most trying circumstances she has conducted herself with uniform propriety. The correspondence seems to prove that there was an honourable courtship between her and the defender; and the expressions which occur in the course of the correspondence are in this view perfectly sufficient to import or infer a marriage. Since the case was formerly under our consideration I have looked into the Treatise of Swinborne on Espousals, the principles stated in which I understand to be those adopted in this Court and in the law of this country; and I find that the expressions used in the letters before us are much stronger than some of those which Swinborne states as sufficient to constitute a marriage. That author observes, that 'albeit the words be ambiguous, such as of their own nature enforce neither matrimony nor spousals, but 'by common use of speech induce matrimony; by these words true and perfect ma-

March 3, 1831. the Court of Session, on the 9th of July 1830, refused it, and found expenses due. \*

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‘trimony is contracted as well as if the words were naturally and properly matrimonial. For example, the parties contracting use these words: I will have thee for my wife until the earth cover mine eyes; for by these words—until the earth cover mine eyes—is commonly understood, until I be dead and buried, and not until the earth cover my eyes while I am yet alive. So it is if the parties say, I will not change thee for a better; or thus—None shall separate us but death; or thus—I will retain thee perpetually with me; or thus—Here I take thee for mine own; with a thousand like instances, wherein the obscurity or ambiguity of the speech hindereth not, but that the common and usual acceptation thereof doth enforce matrimony.’ Now, the expressions which occur here are much stronger. In *Smith v. Grierson*, June and Nov. 1755, (12,391,) an honourable courtship, followed by copula, was held to constitute marriage; and upon the ground assumed in that case I think the pursuer would be entitled to judgment. The whole proceedings here were private, but that was for obvious and sufficient reasons; and as to the honourable intentions of the parties, there is no ground to admit doubt upon that subject. The present case seems to be decidedly stronger than that of *Lindsay*; and we had a case (*Syme*) before us very lately, where a long correspondence was founded upon, and, as in the present instance, the letters of only one of the parties were produced. Some of the expressions occurring in these letters seemed rather to point at taking the lady for his mistress, but there were others which distinctly implied marriage, and so we held it accordingly. These principles and cases, I think, ought to rule the present case. The pursuer has been treated by the defender in the most cruel manner.

*Mr. Gordon.*—I cannot entertain a shadow of doubt respecting this case; and, were our judgment to be altered, I should tremble for the people of Scotland. The case, in truth, is not nearly so strong as multitudes which have been decided upon the same principles for a period of 300 years. Besides the cases referred to in the papers, I might mention many others; such as *Anderson*, Feb. 23, 1714, (12,676;) *Young v. Arnot*, Decem. 1738, (16,743;) and many others.

In the first place, I hold that there was here an honourable courtship. In the early part of the correspondence there is an offer of the heart in one of the letters, which is founded upon in the libel as a promise of marriage capable of constituting marriage when followed by copula; and the other strong expressions which occur in the letters are just so many of the thousand ways which are mentioned by *Swinborne* as sufficient to enforce marriage.

I consider also, that the subsequent letters contain decisive evidence of the fact of a secret marriage between the parties subsisting at their date. The expressions, ‘Your uncle is my uncle,’ and various others of a similar kind, admit of no other construction. Our judgment will therefore be the same as formerly, and will be expressed in the terms always employed in this Court, viz. that the circumstances proved are sufficient to infer a marriage between the parties. Upon considering the whole of this case, it seems impossible for any one to doubt that the circumstances do infer matrimony.

\* 8 *Shaw and Dunlop*, No 509. At the advising the Judges delivered the following opinions:—

## Sir Richard Honynman appealed.

March 3, 1831.

*Lord Justice-Clerk.*—My Lords, we are now to proceed, in the discharge of our duty, to decide this case, which has been brought before the Court on two several occasions. And sure I am of one thing, that the judgment we are to deliver proceeds upon most full and due deliberation; for your Lordships will recollect that, on advising the case when it came before us on the first bill of advocacy, we thought that there were points on which more light might be thrown. We therefore afforded the parties an opportunity of stating those points in minutes and answers, which were accordingly lodged; and, on considering which, your Lordships thought we should not properly decide this case without remitting to the Consistorial Court, with a view to give that Court an opportunity of considering the cause, and the minute and answers, and some documents which had been produced with these papers, and also of allowing that Court to take into consideration offers of certain additional proof which were made here. The case was accordingly remitted to the Commissaries. They allowed the investigation I have referred to—a proof was led and concluded—the cause was deliberately considered by that Court; and a judgment was pronounced, again adhering to that which they had formerly given, decerning both in the action of declarator of marriage and of legitimacy. Then the cause is again brought before us in a second bill of advocacy for the defender, with answers for the pursuer; and, still anxious to give the parties every opportunity of fully stating this case, a hearing of one counsel on each side took place on a former day; and your Lordships are now to deliver the judgment to which you have come upon this question.

My Lords, in considering this case, it has appeared to me—I will fairly confess—to be a point of importance, on which it is necessary and proper that our minds should be conclusively made up, whether, looking to the judgment pronounced by the Consistorial Court, in applying that judgment to the summons, the objections to the terms and structure of that summons are or are not well founded. Your Lordships are aware of the manner in which that summons is expressed. The objection taken is of this nature, that, in the summons, while the pursuer concludes for decree of declarator of marriage, she confines herself to one particular species of marriage, viz. a marriage said to have taken place in 1813, by declaration de præ-senti between the parties, as husband and wife; and that that is the only ground in the summons on which she lays her case. But, my Lords, after attending as closely as I can to this objection, and being free to admit that, according to the rules of strict procedure which we now observe in this Court, I was at first sight struck with the importance of the objection; yet, upon consideration of the whole of that summons, and the objections taken to it, I am of opinion that they are not good. My Lords, I must take that summons as a whole—I must take the narrative—the detailed intimacy—the honourable courtship there set forth; and then, no doubt—which I do not overlook—there is this specific statement in the body of the summons with regard to the transaction of 1813, on which the relationship between the parties is rested. But I do not stop there; and I go on to look to the continuance of the connexion as there set forth—the birth of children—the correspondence that passed between them; and then I am driven, after all, to the general subsumption of the summons, which is, in my opinion, perfectly sufficient to warrant the pursuer to argue as she is now doing, and to insist that the judgment pronounced is not without the four corners of that summons, but one which, within the summons itself, it was competent to pronounce. The words are, ‘ That from other letters and documents which will be produced, and from facts and circumstances to be



March 3, 1831.

*Appellant.*—1. The summons is laid exclusively on the averment that the marriage was constituted per verba de præsenti,

‘ proved, it will be made to appear that the complainer and the said Richard Bempde Johnston Honyman, now Sir Richard Bempde Johnston Honyman, are married persons, husband and wife, of each other; and that the complainers, Elizabeth and Alexa Honyman, are their lawful children.’

Now, my Lords, if I am right in arriving at this conclusion, it remains to be considered whether there is evidence now before your Lordships to support the judgment of the Commissaries, which decerns in this action of declarator and legitimacy. Now, I do apprehend that, independently altogether of the concession, which, with perfect fairness, was made on the part of the defender’s counsel, your Lordships can entertain no doubt that, by the law of Scotland, as a marriage may be constituted by an antecedent promise, followed by a copula, that promise may be proved in a variety of ways. It may be proved by witnesses — it may be proved by direct writings — and I apprehend that there is not a doubt, by a train of proceedings and course of conduct that leave no doubt in the mind of any individual, that a serious proposal of matrimonial union was in the meaning of the parties at the time.

I think that doctrine is established beyond dispute by the judgment in the case of Steele, admitting the relevancy of a train of circumstances, without any writing or direct promise, to make out a marriage. I must hold that to be a judgment upon the law as establishing this doctrine; and I know it is noticed by those whose peculiar duty it is to attend carefully to the proceedings of the Commissary Court, and by those who write upon the subject, as so deciding the law. But I apprehend we have another decision in the case of Stuart and Lindsay, which directly shows that a train of conduct, different from what occurred in the case of Steel, whereby the mind of the party was led to this conclusion, and to no other, that, previous to the personal intercourse, marriage was in the contemplation of the parties, entitled the party who had yielded in consequence of this conduct to plead, that she so yielded in consequence of relying upon a previous promise between the parties. That is the case of Lindsay, where, by the defender referring to a part of the Bible treating of marriage, and putting before the woman the statute with regard to the annuities for the widows of excise officers — he being an officer of excise — and undergoing an examination, in which he prevaricated and made inconsistent statements, the Consistorial Court had no hesitation, on the first deposition, in finding the marriage proved. This Court had some doubts on the first deposition; but on considering the second — for he was twice examined — we without hesitation adhered to the Commissaries’ judgment, and refused a bill of advocation.

Now, that being the rule, we have only to consider whether there be in the present case evidence before your Lordships that establishes that a promise of marriage did take place. This undoubtedly is the cardinal point of this case; for the connexion is admitted, and the fruits of the connexion are admitted to be the offspring of the defender; and, but for the question as to whether there is evidence of a promise, there would be no case here at all.

Now, my Lords, I apprehend, in looking to this question, we must consider the situation, in the first place, in which the parties stood at the commencement of their acquaintance and intimacy. Now, we have here the statements contained in the condescendence and answers, in which papers, in the first place, it is established that the pursuer of this action — against whose character your Lordships will observe there is not the vestige of proof even offered, and unquestionably none adduced, to show

and therefore it is not competent to inquire whether a marriage March 3, 1851.

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that she was not of an irreproachable character; on the contrary, the length of her services in the family, and the fact that she continued for so many years to superintend the education of the young ladies, with their mother's approbation, is proof demonstrative that, down to 1814, she maintained her situation in a manner totally irreproachable and blameless. We have it also in evidence — for there is a statement made in the condescendence, and not denied in the answer, which is most material — that, during that period she had saved money, which was deposited in the hands of Sir William Honyman. We have it also clearly proved, that, however it was made, she had likewise money in the hands of Mr. Duncan Stevenson to the extent of £300 or £400, and that accounts for her being supported after the connexion with the defender had ceased.

It is also in evidence, that in 1812, on account, as she states, of ill health — but whether that is correct or not is of no consequence — it is in evidence that she remained in London, and that, while there, the visits of the defender were more frequent; and that he was admitted to visit her three times a day. It is admitted that he visited her in Millman-street, although it is not admitted that he visited her daily; but this is an admitted part of the case, that, after the pursuer went to London, the defender's assiduities to the pursuer were continued. That is admitted by himself. The pursuer states — and with regard to that, I admit that, further than is disclosed by the letters, there is no proof — that, on her return to Scotland, and on his return from Parliament, he continued his assiduities. Your Lordships will observe that, in the 9th article of the condescendence, it is stated: 'The defender having returned from London to Edinburgh in the course of the same year, 1813, he, upon his arrival, and at his first meeting with the pursuer, expressed the most unbounded affection, and repeatedly declared his determination that they should not again part. He resided from the month of April to the end of June 1813 at his father's house, Queen street, Edinburgh, or at Smyllum Park. During this time the defender's courtship and solicitations to the pursuer were incessant. He took every opportunity of being with her in her own room, and of walking out with her whenever he had an opportunity.' Now, in his answer to this article, he says: 'It is admitted that, after the respondent's return from London, his intimacy with the pursuer continued. That intimacy was solicited by herself, and was unavoidable, considering the situation in which he was placed. It is admitted that the defender was frequently with her in walking out as well as in her own room.' These are his own admissions on the record, which are sufficient to demonstrate that, while she held this fair, responsible, and honourable situation in the family of his father, being the instructress of his sisters, he continued that intimacy with her. And I must say here, that I know of no necessity that there is for any intimacy being formed between a male person, a member of a family, and a person in the situation of the pursuer. However respectable, and however irreproachable her character, yet I can see no necessity, and I can admit of none of that which is here referred to, that the intimacy was imposed on this defender from the relative situation of the parties. On the contrary, the proof of the acquaintance and of the intimacy which took place in London, and after their return to Scotland, your Lordships, I apprehend, must hold to be a proof, so far as it goes, of the averments in the condescendence that this party did form that intimacy and that connexion with this woman, which was not necessary, and was not imposed upon him from any of the circumstances in which they were placed; and your Lordships must be of

March 9, 1831. took place in any other mode. But there is no evidence of any

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opinion that it was sought by him, and persisted in by him, in the way I have pointed out.

Having continued this intimacy from 1811 down to summer 1813, when it is averred — and there is no proof to the contrary — that for the first time any personal intercourse took place, the next inquiry is — and it is a most important one — What was the real nature and object of this long-continued intimacy which had for eighteen months preceded the connexion? My Lords, the answer to this appears to me to be found in three letters now before your Lordships, preceding any pretence of any personal connexion whatever — I say three letters, because the first two letters carry intrinsic evidence on the face of them that they were written while the defender was attending his duty in Parliament; and as to the third letter, (commencing ‘My dearest, dearest Eliza, if I were not the worst,’ &c.), which is No. 5., your Lordships will find, in the answer to the 10th article of the condescendence, that the defender states that this was not written in April 1814, as had been supposed, but that it was written before he had any connexion with the pursuer. Here, therefore, your Lordships have evidence of the best possible nature, from the defender himself, that this letter is to be added to the others which were written preceding the connexion between the parties.

Now, my Lords, these letters are before your Lordships. I have considered them again and again — I have read them with every possible attention and anxiety, to discover what their real meaning, import, and tendency truly is; and after the most deliberate consideration in my power, I am of opinion that they are reconcileable to an honourable purpose, and to nothing else but to an honourable purpose, on the part of the defender, and influencing the mind of the pursuer. I can discover in none of these three letters the slightest indication that mere seduction was the object in view. There are ardent expressions occurring in them, and it would be most extraordinary if there were not; but I cannot discover an expression in any one of them but such as indicates an honourable purpose, and must have been considered as indicating such purpose.

It is impossible to trouble your Lordships with all the observations that have occurred to me on every one of these letters; but it is impossible not to notice some of them; for, in my apprehension, they speak a language which cannot be mistaken at all.

The first letter in the very first line of it contains a flat and decided contradiction to a statement which you will find made by the defender in the answer to article 8th of the condescendence, where it is expressly denied that he ever asked permission to write to the pursuer. Now, look to the second line of this letter: ‘You will probably have conceived, by the time which I have suffered to elapse since the permission which you so kindly granted me, that I did not intend availing myself of it; but so bewildered and agonized have I been since our separation, that I have been unable to give utterance to my feelings, or form one rational sentiment, even to her who is the tenderest object of my regards.’

Here is a declaration under the hand of the party himself, in the very first letter that he writes, that he avails himself of the permission which had been granted by this woman to write to her. Is this not direct proof that he was the person who had solicited the permission of entering into a correspondence? There are many other expressions in that letter which I might notice; and there is one on which I can put no interpretation, and to which I can attach no other meaning, than that which I have stated, that it was an honourable courtship: ‘If the sentiments,’ he says,

such marriage. On the contrary, the allegation that the words libelled were heard by the appellant's sister has been expressly March 3, 1831.

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‘ which I so ardently feel, and have so repeatedly avowed, be reciprocal, hesitate  
 ‘ not to say so. I am unable to doubt, after the innocent endearments with which  
 ‘ you have favoured me, that it should be otherwise ; yet still, as a solace to my  
 ‘ woes, refuse not this solicitation. Write me. Tell me that I am dear to you, thou  
 ‘ lovely girl. Would that we were once again together, and nothing shall separate  
 ‘ us. I look forward with rapture to our again meeting, and then we must form  
 ‘ plans for putting our feelings out of the reach of hate.’ It is supposed it should  
 be ‘ fate ;’ but whether it is read the one way or the other the meaning is the same,  
 that, when they were together, measures would be taken to put their feelings out  
 of the reach of either fate or any thing else. The letter concludes with an ex-  
 pression, with regard to which I have not heard one word offered in explanation by  
 the defender. The letter talks of raptures, and so on ; and Mr. Cockburn said that  
 you must make allowance for the use of such words between a young man and a  
 young woman. And all this may be well enough ; but what can be made of these  
 words, with which the letter concludes, ‘ believe me, with an attachment strong as it  
 ‘ is pure, yours most affectionately ?’ As to this letter, therefore, unless I am to  
 change the words, and to say that pure means impure, I must give effect to this ex-  
 pression as leading to no conclusion but that of honourable love. What is a pure  
 attachment except an honourable attachment ? You will see what is the meaning  
 of it in the second letter, where he talks of felicity sanctioned by virtue itself. But  
 I am to substitute, I presume, the word pure for impure in the first letter, and in  
 the second I am to read vice for virtue. I know of no way, except by substitut-  
 ing different words of a totally opposite meaning, by which I can come to any other  
 conclusion except that in favour of the pursuer. In this second letter, I will not  
 trouble your Lordships with the expressions of rapture which it contains, but which  
 are quite foreign to the point I am now inquiring into ; but I cannot overlook that  
 part of it in which he says, ‘ Nothing, I trust, will thwart the happiness I look  
 ‘ forward to. Nothing shall, nothing can, for it is felicity sanctioned by virtue her-  
 ‘ self, and every thing that is tender and amiable. In offering you, my best be-  
 ‘ loved, that heart which has for a long time been devoted to you, I have only to  
 ‘ lament that it is not a more deserving gift to her to whom it is offered. We will  
 ‘ talk over the future when we meet.’ Now, I have already anticipated what I  
 have to say here, that, unless I am to substitute vice for virtue, unless I am to read  
 the word vice in the prosecution of the sensual enjoyment of this woman, I have  
 here an admission under his own hand that the union which he had in view was  
 sanctioned by virtue herself, which can only be ascribed to a person proposing  
 honourable love. The offer of the heart I do not say of itself is sufficient,  
 but you must take that along with the other expressions in the letter to which I  
 have referred ; and when you take it in this way, I must put on the words  
 their plain meaning ; and I am not entitled, in the face of language of this de-  
 scription, to allow him to escape — from what ? — from the lawful effect of his  
 own conduct, by saying they have a different meaning from what they contain ; and  
 I will not allow the defender to say, when I use the language of virtue, I mean the  
 language of vice.

The third letter is also in its terms deserving of consideration. Your Lordships  
 will recollect that it first refers to letters she had received. The effect of that I  
 shall immediately notice when adverting to the absence of these letters. Then he

March 3, 1831. negatived. Accordingly, the Court below did not put their judgment on this ground, but on the ground that the marriage

says, ' You deprive me, thou who art the most dear of thy endearing sex, of a very great pleasure, by prohibiting my delivering your letters to our uncle. Be it so. I obey as you desire.' Nothing was more natural, during the time the courtship was going on, than that she should not choose that their intimacy should be disclosed to their relations; and she cautions him that, although they may be sent under cover to him, ' Do not let them be delivered by you.' But, seeing that the other letters talk of an attachment strong as it is pure, and felicity sanctioned by virtue, it is a most essential part of the correspondence to be attended to, that he says, in this letter, that she deprives him of the pleasure by prohibiting him delivering ' your letters to our uncle' — not to my uncle, but to our uncle. It applies also to what occurs in another letter, in which he says, ' You have no embraces for any one else but me, not for aunt Fraser or sister Anne. I call them so; for your aunt is my aunt, and your sister my sister!' Now, I beg leave to say, that I am utterly unacquainted with any one instance that can be pointed out, in the history of an illicit amour, or of an intention of seduction — for that is the plea maintained here by the defender — I say I know of no case, and I do not believe there is a case where this was the object, where it can be shown in the correspondence that the party meditating the seductive purpose, or having it in view, applies this language in denominating the relations of his paramour his own relations. I know of no instance of it; and I shall venture to say that there is no instance, in relation to the birth of a natural child, where that event, which is not only matter of the deepest anguish, but even often terminates the existence of the unfortunate female, was hailed with a desire expressed by the father of that child to be present at the birth, to soothe the feelings of the mother, and partake of the joy which such an event will occasion. This is language which, I will venture to say, never was employed by a seducer. These are things always passed over; and, if noticed at all, are topics on which they never enlarge. But here you have this man denominating her uncle his uncle previous to any connexion, and, after the connexion, her aunt termed their aunt, and her sister their sister; and you have the language which I have noticed in allusion to the expected event, the birth of a child, which is mentioned in that letter in language which I say never was before used in the case of an illicit amour.

If such be the import of these letters, which I apprehend clearly to be their import, that honourable courtship was the purpose in view, I say, upon the clearest principles, that he is not entitled to betake himself to this attempt — to say that he used language contrary to the truth, to create an impression which he never intended.

Then, my Lords, we have to consider how much more important the evidence of these letters is rendered by the conduct of the defender himself — the non-production of the counterpart of the correspondence, which, if there is the least foundation for the defence which he now sets up, must have removed every shadow of doubt upon the subject. I mean the correspondence at this critical time, when the courtship was going on, and when in London, and prior to the connexion which took place. There is evidence, and I am sorry for it, for it is out of the mouth of the defender himself, who, when he was examined in January 1826, says, ' that about two years ago' — I have no objection to give him the benefit of that latitude — he destroyed all the letters which he ever had in his possession. Now, your Lord-

had been constituted by a promise subsequente copula. This, March 3, 1831.  
however, was quite incompetent.

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ships have it in evidence in the (third) letter No. 5. that he says he never would burn the letters, and never could destroy them. But, giving him the benefit of this, look to the last paragraph: — ‘Trust me, my love, but it shall only be until we meet; for I will deliver all your letters into your own possession.’ This is the letter No. 5. prior to the connexion between the parties. Now, is this resolution carried into effect in her presence? Certainly not; for in his deposition he admits, that from 1812 they are carefully preserved down to 1824, and then they are destroyed, and for the first time entirely put out of the way.

My Lords, it is said that this party knew nothing at this time of the pretended claims against him — that he thought that the connexion had entirely ceased; and advantage is taken of the circumstance that the letter in July 1824 is posterior in date to the latitude which he takes in his deposition. But is not one of the facts admitted by him, that the intimacy continued down to 1823? And are your Lordships to come to the conclusion, or can any man breathing believe it for a single moment, that this woman, who had acted in consistency with her claims upon the defender all along, had, in 1823, abandoned all claims upon him? On the contrary, when you come to grapple with that, it appears in the evidence, that although she begs for relief for her children, yet, so far from an abandonment of her claims on her own account as his wife, she writes that letter in July 1824 which is now produced. Does that afford the slightest evidence that she had at any former period abandoned her claims against him? My Lords, I say it does not; and I think there is not the slightest vestige of evidence; and as it is proved that the intercourse continued till 1823, and as, if ever there were letters destroyed under the most suspicious of all possible circumstances, these documents destroyed by the defender stand in that situation — it is perfectly clear to me, on the soundest principles of law and justice, that whatever obscurity may rest on the letters before 1813, the presumption is all in favour of the pursuer; and that the most favourable interpretation for her must be put upon that circumstance, and upon that correspondence, seeing that all the rest, after having been kept by the defender for seven long years, are put out of the way in the manner I have stated.

Now, my Lords, such being, as I apprehend, the true meaning of the letters that were written prior to the personal connexion, the admitted connexion followed by the birth of children, we come, in the next place, to the other correspondence which we have in this case. And, my Lords, I do, for one, most unfeignedly profess, that after considering one and all of the letters of which that subsequent correspondence is composed, I have been unable to discover any one expression which I could apply to or reconcile with the supposition of this being an illicit amour between these parties; whereas the expressions in every one of them which has been produced by the pursuer are perfectly reconcileable with the averments she has all along made, that while this union was made secretly, and was to be kept concealed from the father of the defender, yet it was a union of a strictly honourable nature, and was entered into with the full and perfect reliance that it was a matrimonial union.

There is one most remarkable circumstance in this case, which is to be found in the answer to a question put from the Court. It is expressly stated that this unfortunate pursuer’s misconduct, or, as it is there said, her guilt, was discovered, and led to her dismissal in 1814 from the family, when it is in evidence she went to the house of a most respectable person in Inverary. Here is a statement that the dis-

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2. But there was no such promise as that alleged, or such as is relevant with a subsequent copula to constitute marriage.

covery was made, and that her dismissal was the consequence of that discovery. But I observe, in the concluding part of the last-written documents that have been produced, that it is not till 1824 that the defender, in a communication to his agent, says, ‘ I have resolved to communicate the whole affair to my father;’ and on the next day he writes, ‘ I have told my father the whole concern; and he will speak to you ‘ when you come to Smyllum.’ Now, my Lords, if that discovery he makes is only of the existence of an illicit amour, I ask your Lordships whether it is a likely circumstance, whether it be credible, or if any human being can believe it, that if that were the whole extent of the discovery, the only party from whom it is to be concealed is the father, while those who are to be made acquainted with it are the female part of the family? My Lords, this leads to a conclusion extremely material, when coupled with the fact that the intimacy was known to some of the female members of the family — the individuals from whom of all others it must have been anxiously concealed, had it been nothing but an illicit amour between the parties.

As to the letter No. 6. (commencing ‘ My dearest, dearest Eliza, I received your kind letter, &c.’), the expressions there used are, I conceive, perfectly reconcilable also with the opinion I have already expressed, and indicate nothing but a virtuous purpose between the parties; and I must observe that they are perfectly inconsistent with the statement of the defender, in the answer to article 10th of the condescendence, that he does not know when it was written.

As to the letter No. 7. (commencing “ My dearest, dearest Eliza, if you think I have forgotten, &c.”), in which the word ‘ wife ’ is supposed to have been superinduced, I have taken that letter most carefully into consideration. I called for it, and I ordered it to be sent to me under a sealed cover, and I have examined it again and again; and the result of my opinion is just this, that, while there does appear, no doubt, something like superinduction where this word occurs — in the word wife — yet after the closest examination, attending to all that is said by the engravers as to the difference of the ink — the slope — the writing of other words and other letters in that letter — I do not think that superinduction was made by a different hand from that which wrote the other parts of the letter. If you look at it you will see that a difference occurs in other words as well as in this in regard to the ink — which does not weigh a feather with me, although all the engravers on earth were to swear to it — there are other words written in blacker ink as well as it. I look just at one word, ‘ frequent ’ — that is in blacker ink than all the rest, and the next word is in paler ink.

You will observe that these engravers are by no means at one — they will not swear that, although some of the other words seem to have been gone over and retouched, they were also done by a different hand; but their opinion goes to this, that the alteration on this word wife is done by a different hand from that of the writer of the remainder of the letter. Yet it is merely their opinion; and therefore all I shall say is, that I am not satisfied that that is established. There is one word which now reads ‘ from,’ but which, it is as clear as the sun at noon-day, did not originally read ‘ from,’ but ‘ of;’ and there are many more examples in which, for the purpose of making it correct, alterations have been made; but are we to presume that what was made merely to correct the grammar, and make the letter more correct, are all superinductions, and made by a different individual? I therefore say, that I am not satisfied that there was any superinduction by a different hand;

The appellant no doubt made use of ardent expressions of endearment, but that is not sufficient; there must be a paction

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and I will add, that no engraver on the face of the earth will convince me on a point of this kind of moral evidence. For does that word 'wife,' which you see in that letter, not stand in keeping with the rest of the letter? My Lords, I say it does. It is in this letter in which these remarkable expressions occur to which I have called your Lordships' attention. It is in this same letter that he says, 'How are we to continue to carry on our correspondence?' 'Tell sweet Jemima to write, and you can put a letter inside.' My Lords, is such audacity to be permitted to be assumed as to suppose that this person, writing to his paramour, is to do so through the assistance of his sister? Is it possible for one moment to hold this, when the language is perfectly reconcilable with an honourable connexion? Then look to the next words: 'Tell me, my Betsy, if you think there is any likelihood of the event which you and I talked about taking place. If so,'—What? 'Go into concealment and hide your shame' would have been the words of a man to his paramour. 'I shall give you all the money I can; but go and conceal it from all the world.' This is not the language; but, 'if so'—if the event does take place—'you must come directly. I must be with you. I,' the father of the illegitimate offspring, forsooth! 'must be with you, to comfort and soothe you, and to partake of the joy such an event will excite.' Is it a surprising matter, therefore, that in a letter containing such expressions there should be found the words, 'my beloved wife, take care of yourself?' So far from any thing unlikely in the expression, it is just what would have been expected to have passed between the parties in the situation in which they stood to each other as married persons. And what does this letter conclude with? Why—'I dread a discovery of this epistle.' But, were there nothing to be found in it different from letters to his mistress, why dread so much the discovery of this more than any other letter? If it contained only the fashionable language of seduction, of which he is not to be ashamed, according to his own statement, why dread the discovery? and why so anxious that the letter should be concealed? This expression, therefore, is just in correspondence, and consisting with the relation of virtuous union between the parties; and all that I can say is, having dwelt so much on this epistolary correspondence, and put the interpretation on the letters which I think their words imperatively demand—all that I have to say is, that, with regard to the language so used, if we were to put on them the construction which the defender maintains to be their import, your Lordships can do so only by imputing to him direct insanity; and that he uses words in one sense which to every other person mean something else and entirely different. Is that, I ask, what we are entitled to do?

My Lords, I am quite aware that a considerable degree of weight was attached by Mr. Cockburn to the total absence of a letter referred to by the pursuer in her letter of the 14th July 1824, in which she expressly states, 'I had a letter from your sister,' saying so and so. Mr. Cockburn said, Where is the vestige of any such letter? it has not been produced. And certainly that is true. Now, although I do not say that it amounts to perfect demonstration that this letter once existed, yet it does appear to me to be a circumstance on which the pursuer is entitled to found—whether decisive or not, your Lordships will determine—that we have clear proof that some of the letters once in her possession have been lost. For I cannot agree with Mr. Cockburn that the new proof has been attended with no effect in this case. I cannot agree with that, although I agree that there is great deal of hearsay introduced as to sending a man to Dalkeith, and telling what account he



March 3, 1831. or contract to enter into marriage; and it would be extremely dangerous to sanction mere amatory expressions as equivalent to

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got of what another person had said. I think that is no evidence at all, and lay it entirely aside; but I go to the evidence, which, I say, is clear evidence, of the sale of the escritoire containing papers when the pursuer was lying in jail, and had no control over the effects which were sold for the pitiful debt of this woman. It is in evidence that this escritoire was emptied of its contents, and a great many papers and letters were thrown upon the floor. The fact of that sale, at a time when this woman could give no directions as to the protection of these documents, is proved beyond the possibility of doubt. Now, attend to the fact, that on 14th July 1824, after her ineffectual attempts to bring one farthing out of the pockets of this defender, to support herself and her children, she makes this most powerful appeal to his feelings, after endeavouring to excite his feelings for his children, in direct contradiction of the statement in the bill of advocation, that the communication took place without the least regard to her own status as his lawful wife. That is argued throughout the whole bill of advocation; but the second proof has demonstrated that there is not the slightest foundation for such a statement, and shows that not one farthing would be advanced by the defender unless she would renounce those claims against him. Now, at this distance of time, when she is unable to recover these letters, which had been scattered on the floor at the sale of the furniture, it is important to remark that about July she writes this letter, which contains the exposition of her case, and the general statement of her claims. It is a letter that is in truth embodied in the summons; and it is most material to observe, that the defender here was warned that it would be preserved, to be put into the hands of the person to be employed to vindicate her rights. My Lords, it is in this letter that she says, ‘I have a letter from your sister,’ in which she calls the pursuer her dear sister; and this, coupled with the proof that the pursuer was deprived of the power of looking after her property, aids extremely the case; for it shows, while this letter was to be preserved on the one hand, that it is next to incredible on the other that she should have asserted in it that she had a letter from his sister if she had not received such a letter.

The second proof appears to me important in other particulars; for, does it not shew the probability of the statement which the pursuer had all along made, that, while the situation of the parties was to be concealed, she still went on to live on her own money? The evidence of Stevenson proves that he remitted £200 to her, when residing in York, by London bills, and that he paid her the balance in 1821, when she was residing with her aunt, Mrs. Fraser. The second proof, therefore, I think important in that respect also.

My Lords, the interruptions and renewals of intimacy between these parties, with the circumstances in which this woman was compelled to break her silence, appear to me far from being unfavourable to her. In these letters, while she makes the strongest claims in behalf of her children, she keeps the silence all along, and does not betray the confidence, she says, the parties mutually reposed in each other. It is only when these demands are resisted that she is driven to the necessity which renders it impossible to keep silence any longer; and therefore she breaks it, but not till she is driven to it. I am of opinion that, so far from there being any thing inconsistent in this conduct — on the contrary, while you see her maintaining herself for some time by her own labour, and on her small capital, the silence was sacredly preserved — it is perfectly consistent with the statement that the marriage

a solemn promise of marriage. The appellant's letters only convey an indication of that attachment which a young man

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was to be concealed as long as possible, and was only broken when she could no longer conceal it.

Therefore, my Lords, having so very fully explained the grounds of the opinion which I have formed — that there is sufficient evidence of an honourable courtship — that the letters are reconcileable to nothing but an agreement to marry prior to the personal connexion, and that those subsequent ones are equally reconcileable with a virtuous and honourable union — I am of opinion that the judgment of the commissaries is well founded, and that your Lordships should adhere to that judgment, decerning in the declarator of marriage and legitimacy. And, my Lords, while this judgment will do justice to the parties by establishing their several rights, it will, I trust, afford a salutary lesson to those who, with undue purposes in their hearts, use language, and conduct themselves in a manner that can lead to nothing but the conclusion that they had honourable courtship in view, and, if they violate the chastity of a female, that can be followed by nothing but a judgment of this Court, vindicating the rights of the injured woman, and finding her entitled to the status of a married person.

*Lord Glenlee.* — I cannot say I am quite satisfied with the judgment of the commissaries. I do not go so far as to say that a direct promise by explicit words must be proved to have taken place, but there must be evidence of an actual promise having passed between the parties. Now, as to the evidence of the letters, I have some difficulty in thinking that they establish such a promise. There are expressions in them which, being interpreted in a certain way, may be held to imply a promise of marriage; but I should like to see any case whatever, in which, upon an interpretation such as this, a promise has been held to be proved.

I acknowledge that it is admitted law that there is no necessity for an actual promise by words being proved, and that there may be a virtual promise implied sufficient to make out a marriage by facts which, if once established, show by necessary inference that there was a promise; and in the case of *Stewart and Lindsay*, which was a very strong one, that doctrine was certainly held. But then it was from facts which were proved there; and the matter of fact which was established was, that the man had handed over a Bible, and shown the woman a chapter in *Corinthians*, treating of marriage, and of the duties of husband and wife, and bid her read it, and at the same time he showed her what were the provisions for the widows of officers of the excise. These facts being established, the inference was just a matter of necessity from them that marriage was intended. It was just the same in the case of *Smith v. Grierson*, which was the first that established the principle that a promise might be made by implication without any direct words. In that case it was objected, that you could not allow a promise to be proved by witnesses; but the plain answer was, We are not going to prove a promise at all, but we are going to prove facts — the courtship being notorious — the party having told his companions that he meant to marry this woman, and having otherwise conducted himself so as to make the inference from these facts a matter of necessity that he meant marriage. If a man admits that he desired the banns to be published, or does something equally unequivocal, there the admission, from the mere matter of fact, of itself supports the irresistible inference that a marriage was promised. It is

March 3, 1831. may form for the person of a young woman of the same age without any intention to enter into matrimony. The only

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a very different thing, however, when it is not on matter of fact that the conclusion is rested, but merely on the interpretation of expressions in letters which some think are only applicable to the married state, and not so applicable to a different connexion. The meaning of such expressions is always a matter of mere arbitrary interpretation; and their use, purport, and force must depend much upon the various habits or tempers of the persons who employ them. Now, where the question has been tried on that sort of evidence alone, I am not aware of any case in which it has been held sufficient that expressions have been used which may be thought applicable to the married state; and it would be attended with very dangerous consequences, that a man may be married merely because he has used one word, whilst another, because he has omitted that word, is not married. It does lead to a great difficulty in my mind to find a marriage solely and entirely on evidence of this sort. The other mode, of inferring a promise from facts proved, is a very different thing, when the facts established are such as necessarily to show that a promise must have passed. If, in place of writing these letters, and using the words that 'it was a union sanctioned by virtue,' and other vague expressions, he had said, Read that chapter of Corinthians — which was referred to in the case of Stewart — I think the case would have been different, that chapter necessarily implying that a matrimonial union, and nothing else, could be in view. My apprehension of the law of Scotland is, that the previous promise must be established substantially from facts that can lead to no other conclusion, if the actual promise be not proved itself. My idea, in short, is that, in order to constitute a marriage by promise subsequente copula, there must be evidence of a promise, either express or implied, as a substantive fact complete in itself, without reference to any thing that follows afterwards. If there is a direct promise, it should be of that kind that would be the foundation of an action of damages for breach of promise of marriage if the party should break it, supposing no copula to have followed upon it. And in the same way, if it is attempted to make out an implied promise by evidence of facts and circumstances, there must be proof of such a courtship as would be the foundation of a similar action of damages if the man should afterwards break it off, and marry another woman.

I am not so entirely satisfied of the import of these letters as to think that they can be considered only as the letters of a respectful lover to his mistress, if I may use such an expression. I cannot see, for instance, that, because he says that he avails himself of the permission given him to write to her, it therefore must follow that he asked that permission. The expression used would have been the same if she had volunteered that permission.

I am not going to make a commentary on these letters; but it is quite evident from them that the intimacy had gone a certain length, probably farther than the bounds of very respectful love would allow, before the earliest of them were written. He says in one of them, that 'so bewildered and agonized have I been since our separation, that I have been unable to give utterance to my feelings, or form one rational sentiment even to her who is the tenderest object of my regards. If the sentiments which I so ardently feel, and have so repeatedly avowed, be reciprocal, hesitate not to say so.' That certainly implies that matters had made a certain progress between them. And what was that progress? He goes on to say, 'I am unable to doubt, after the innocent endearments with which you have favoured

expression which can otherwise be construed is the one written upon an erasure; but the rule of law in regard to vitiated

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‘ me;’ and then, ‘ Would that we were once again together! and nothing shall separate us. I look forward with rapture to our again meeting, and then we must form plans for putting our feelings out of the reach of hate.’ Then, in the second letter, he says, ‘ I received your most welcome letter this morning. Well does it deserve an immediate acknowledgement,’ &c.; and then, ‘ Soon, however, I trust we shall meet, and one soft embrace will repay me an age of anxiety and distress.’ That certainly implies that the attachment had already made some progress towards a consummation. If he had left out all that related to ‘ innocent endearments’ and ‘ soft embraces,’ there would have been more in the expressions of purity and virtue. And when he talks of ‘ felicity sanctioned by virtue herself, if he had stopped there, in like manner there would have been more in it; but then he goes on to add, ‘ and every thing that is tender and amiable,’ and such like nonsense. With regard to the expression of what I was going to call the religious feeling, that he would love her not only while he lived, and even after her death, but that he would love her even after his own death also, my Lords, it is quite clear that this is absolute nonsense. It is such a nonsensical sentiment altogether, that I do not see that we should go upon the supposition of honourable love more than the other to account for it. As to the destroying of the letters, I admit it is perfectly impossible to get quit of the suspicion that he destroyed them because he thought they would do him harm; and he has certainly much reason to be ashamed of the whole correspondence. But I think that she also has a great deal to answer for in not having preserved more than she has done; and the same suspicion attaches to her, that if more of his letters to her appeared, they would not tend to support her plea. The reason she assigns for not producing many of his letters is, that they were lost at the roup of the furniture which took place, and I see that it is now impossible to trace them; but I do not see that at the time, in July 1824, when the negotiation was going on, there was any impossibility of recovering them. If she had sought for them, I think she might have been able to trace them, especially as Mrs. Wilson states that she had seen and read the letters, which seemed so strong that the witness’s impression in favour of the pursuer’s statements was confirmed. Why did she pick one letter more than another? and what induced her to take better care of the letters that have been produced than of those which were lost? I am satisfied that the non-production of one of these letters in particular is not accounted for in any way whatever. I mean the letter in which she says she was called by Miss Jemima Honyman, ‘ her dear sister,’ and ‘ her dear Lady Dicky.’ In the letter of July 1824, after the roup of her effects, she says most explicitly that it was in her possession then. If she ever had that letter, it must still have been extant and ready to be produced; and Miss Honyman denies and negatives every question that is asked at her. It is a very extraordinary circumstance, likewise, that from 1815 to 1821 all intercourse between the parties should have ceased if they were man and wife. According to her averment, the matter was quite well known, not only to Miss Honyman, but to Lady Honyman too; and the pursuer says it was also spoken of in presence of Mrs. Fraser. Now she has failed in her proof of that altogether — she has not proved a word of it. To be sure she did not examine Lady Honyman; but still that is her statement, that there was no concealment whatever of the situation in which these parties stood to one another.

March 3, 1831: writs is, that the words are to be held *pro non scriptis*, and consequently must be thrown out of view. The conduct of the parties also shows that they had no matrimonial intentions.

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Upon the whole, it is impossible for me to go through the correspondence without being impressed with the conviction that these parties never looked upon their connexion from beginning to end as that of married persons, or in any other light than that of an illicit amour. Now, I know that it is very true, that where an explicit promise of marriage is proved, and copula follows upon it, a woman's ignorance of her legal rights, or the real nature of the connexion which then takes place, will not prejudice her cause, nor prevent the legal and necessary effect following from the copula which takes place after an admitted or explicit promise has been clearly proved. Nothing could be a stronger illustration of this than the case of *Pennycook v. Grinton*, where the woman was so ignorant of the real nature of her rights, that she first raised an action of damages for seduction, and was afterwards allowed to desert her libel, and to bring a new action for declaring her marriage; but it appears to me to be very different when a promise is attempted to be made out by implication and by the understanding of parties. In that case it becomes a necessary and relevant inquiry, What did the parties really understand to be the nature of their connexion, or the true import of those expressions by which the promise of marriage is said to be implied? It is very true, that where you have a direct promise, the law will not allow any inquiry into the understanding of parties as to the nature of the connexion which afterwards takes place on the faith of it; but where a promise is only implied from indirect expressions in the course of a correspondence which does not necessarily infer such a promise, but may only be interpreted to mean such, I cannot avoid inquiring what was the real understanding of the parties at the time as to the import of these expressions.

I forgot to take notice of the letter in which the word 'wife' is written on an erasure. No doubt, if this were genuine, and written in such a way as we could pay any regard to it, there would be an end of the case. All, however, that I have to say on the subject is, that I do not know, nor feel myself called upon to inquire by whom or in whose hand-writing the alteration was made. All that I see is that the word is written on an erasure, or has been altered, and, being so vitiated, can make no faith in judgment; and the Court is therefore not entitled to pay any regard to it.

*Lord Pitmilley.* — My Lord, in forming our opinion on this case, the first point to be disposed of is the objection in point of form taken to the summons, that the ground on which this action is rested has not been proved; and the conclusion from this objection is, that the action should be dismissed, reserving to the pursuer to raise another action. My Lord, I entirely concur with your Lordship and with Lord Glenlee in opinion that this defence is not well founded. My Lord, it is perfectly true that the summons sets forth in its narrative facts which are not proved — it sets forth a marriage *per verba de præsenti*, which is not proved, and which could not be proved, as the parties were in private when that is said to have taken place. The summons then sets forth the birth of the two children, the cohabitation, and the correspondence. My Lord, I think the construction which the Dean of Faculty put upon the summons is correct — that you must look to the subsumption of the summons, which is perfectly complete to warrant the proof which has been led; and, my Lords, I observe that in the defence, which is signed by two very able

*Respondent.*—1. The summons is sufficiently broad to comprehend every mode of constituting marriage. The leading March 3, 1831.

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counsel who were then at the bar, my Lord Fullerton and my Lord Moncrieff, that objection was not originally stated. The objection there stated is rather that the summons was not sufficiently explicit. That is stated in the beginning of the defence; and towards the conclusion it is said, ‘With regard to the other letters and other documents alluded to in the summons, and the facts and circumstances to be proved, the defender can only say, that when the pursuer explains the passages in those letters, and proves the facts and circumstances by which she states, ‘It will be made to appear that the pursuer and the defender are married persons,’ he is fully prepared to meet the pursuer upon these points.’ So that he does not state this formal objection to the summons, but admits that it is perfectly correct, and that he is ready to meet the pursuer when the proof is brought forward. I am, therefore, of opinion that the objection is not good. Now, my Lords, when we come to decide upon the merits of the case, I think there are two different duties to perform. In the first place, we must consider the evidence in the manner in which it would be incumbent on a jury to consider it. The connexion between the parties and the birth of the two children is acknowledged; and I think we must make up our minds on this issue, On what agreement — on what implied contract did this connexion take place? Was it on the footing of an illicit amour? or was it on the footing of the pursuer being the wife of the defender? After having fixed this point of fact, our next duty as judges is to apply the law to the verdict, in doing which we must consider whether this understanding — this agreement — this implied contract — is sufficient to constitute marriage by the law of Scotland.

My Lords, it appears to me, in regard to the question of fact, to be but fair to the pursuer to keep in view the very peculiar difficulties in which she was placed in bringing forward her proof. My Lords, this connexion, whether lawful or unlawful, was to be kept secret from every body. That he had the most urgent motives for this, whether the connexion was lawful or unlawful, is most amply proved by his letters; and if we believe the pursuer, there were the most extraordinary exertions made by her to keep this secrecy that ever I heard of in the whole course of my life — they are almost incredible. The anxiety to keep it secret is perfectly clear. It might have happened that Miss Honyman may have heard something about it; but she was the only person that could be brought forward as a witness. The pursuer has failed in that. But it is not a case in which I think we are to look for much parole proof — it is not a case that admits of it.

When we look to the letters, we cannot but remark, in the first place, that these letters are naturally obscure; and, in the next place, that they are not dated, and that many of the pursuer’s letters have been destroyed. I do not see any thing sufficient to account for their destruction — I mean the pursuer’s letters — and I rather agree with your Lordship that the defender has not cleared himself very satisfactorily of the destruction of these letters. But I do not care much for that. All I want to notice is the fact of these letters having been destroyed, however that took place. Then, in the next place, in regard to some of the defender’s letters in the pursuer’s possession, they were also lost by the sale of a chest of drawers and escrioire; so that really this pursuer lies under the most important difficulties, in bringing forward her proof, that a person can almost be placed in; and I think it is impossible to do her justice without keeping that in view. As to the later investigation that has taken place, I think it does not make so very material an alteration on the

March 3, 1831. object of it is to have the marriage declared ; and under a summons having that object it is competent to admit every species of

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case as I expected it would have done. I was struck with the contrary averments of the parties, and thought that the averments might be proved, or that an inference almost equally decisive would have arisen from a want of proof of them. That, however, does not seem to have been the case. But I cannot throw the additional proof out of view. I think, first, the evidence of Stevenson very important, in showing that the pursuer had a considerable sum of money to support herself and her children. As to Mrs. Wilson, there was much inadmissible evidence taken from her, and I would be ashamed to lay any weight on that. Besides being a creditor of the pursuer, and having read the papers, her evidence is almost all hearsay or inference, which I can give no weight to ; but let it not be forgotten that it was the defender who insisted for the examination of Mrs. Wilson. On page 2d in the answers to the minute, he says, ‘ No reason whatever has been assigned for not examining ‘ Mrs. Wilson ;’ and then he goes on : ‘ The truth is, that neither Mrs. Wilson nor ‘ Mr. Hamilton were examined, because the pursuer very well knew that they could ‘ give no evidence in support of the averments which she ventured to make,’ &c. But there is one point of the case as to which, if she was admissible at all, she was very important. It was asserted by the defender, that the pursuer had told Mrs. Wilson, in the presence of the defender’s agent, that she had been married to the defender by a clergyman whom she could at any time bring forward. If that had been true, it would have been very much against the pursuer. But Mrs. Wilson’s evidence, if we are to take it into view at all, clears that up distinctly, and removes all impression from my mind against the pursuer on this subject. My Lords, I have noticed these difficulties under which the pursuer lay in bringing forward the proof ; but, with all these difficulties, we must now say whether, laying aside equivocal expressions, there are leading features in this case on which we may safely rely in resting our judgment. Now, before looking to the letters at all, it appears to me, as it did to your Lordship, right to attend to some of the statements made by the defender in the condescendence. Your Lordships will observe that, when the defender came home from the East Indies, about September 1811, the pursuer states that she was in the family of his father at Smyllum. Then, in answer to article 3d of the condescendence, he says, in answer to the statement that the defender had paid particular attention to the pursuer, ‘ This is denied. On the contrary, the respondent was, ‘ immediately on his return home, courted by the allurements and advances of the ‘ pursuer, which, considering his age, then only 24, it was impossible for him alto- ‘ gether to repel.’ Then your Lordships see that, on the 12th page, he gives his admission as to the date of the first connexion. He there says, ‘ It is true that, some ‘ time in summer 1813, the respondent did obtain possession of her person without ‘ the slightest resistance on her part, and without any promise of marriage on his ; ‘ and this connexion was afterwards continued ; but it is denied that they ever lived ‘ or cohabited as husband and wife.’ Now, if all this is true, I would beg leave to ask how it is possible to account for it, unless we take these letters into view, and see if we can glean from them what the understanding of this woman must have been. Here is this courtship, according to his account, going on for two years, and the lady during all the time making advances to him ; and then after two years she yields all at once to him without any solicitation on his part, without any promise of marriage at all. My Lord, is this credible ? or is it possible for any body to believe it ? My Lord, it is, if we look to the letters ; but it is not credible unless we look

evidence, to the effect of arriving at the conclusion libelled. March 3, 1831.  
 Besides, after reciting the de præsentis words, it libels, "that from

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to the letters; it is contrary to every notion we can have of human nature. We do not forget the opportunities he had in Milman-street, nor his impassioned addresses for two years; and, when we look to the letters, and find the passages in them which are admitted to have been prior to the connexion, I think there is no difficulty at all. I am speaking of the matter of fact at present, as to the pursuer's understanding when she entered into the connexion, and not to the law at all; and I say that the letters clear up all the difficulty at once. Your Lordship has referred to them, and I shall not go over them again in detail. He talks of an attachment strong as it is pure — he makes an offer of his heart — speaks of the felicity sanctioned by virtue itself — he calls her connexions his connexions, and speaks of her uncle as 'our uncle' — he tells her that she has no embraces but for him, not even for aunt Fraser, or sister Anne. And then there is the most important fact of proposing his sister as the medium of communication between them. What construction could this woman put on these letters? Was it ever heard of that language of this kind was used for the purpose of bringing about an illicit intercourse? I do not believe it ever was. But a most important question is, not what he meant, but what effect these expressions must have had on the pursuer, and what she must have understood them to have meant? If he did mean these expressions to have a different meaning, that cannot avail him in this case. It is impossible to forget the rule laid down — so emphatically laid down — by Lord Stowell, in the case of Dalrymple, that a party would be 'bound to answer to demands where he tries to impeach his own expressions. First, he must assign and prove some other intention; and, secondly, he must also prove that the intention so alleged by him was fully understood by the other party to the contract at the time it was entered into. For surely it cannot be represented as the law of any civilized country, that, in such a transaction, a man shall use words expressive of serious intentions, and shall yet be afterwards at liberty to aver a private intention, reserved in his own breast, to void a contract which was differently understood by the party with whom he contracted.' My Lords, if it were possible to believe — and I do not believe it — that there was any sinister object in view when these letters were written, I say it would not avail the defender; for the question is, What impression did they produce on the lady? And if they did produce such an impression as indicated a pure and virtuous union, he cannot be permitted to say that he did not mean them to be so understood. My Lord, when I put the question, What was the understanding of this woman when the connexion took place with the defender? — what was the contract then entered into? — when I put that question to myself as a jurymen, I cannot hesitate as to the answer. I cannot believe that she entered into it as an illicit amour; it is contrary to human nature to suppose so. Whatever effect it may have in law is a different question; but I am satisfied that she must have entered into it with the understanding, and that it must have been the agreement of parties, that it was a lawful connexion.

Now, if this was the understanding when the connexion took place, the next point is as to the application of the law; and certainly the question of law is a very delicate one. I dislike very much introducing any thing like uncertainty into the law of this country on any point, more especially on so important a one as that of marriage. But yet, my Lord, my impression of the evidence is such, that I do not find much difficulty in applying the law to this case. I have always understood that



March 3, 1831. "facts and circumstances to be proved it will be made to appear" that the parties were married persons.

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there are no precise formal words necessary to constitute a promise of marriage per verba de præsenti, which is of itself not a marriage, but only induces an obligation to solemnize marriage. It appears to me that the decision in the case of Lindsay must have been founded on this principle, and that this has been the principle of the law of Scotland ever since the case of Grierson, and the other case in 1755 — that it is enough, without any precise form, that it is made out a promise was given. It appears to me that, if the case of Lindsay was well decided, it is impossible to doubt in this case. I cannot think that the reference there to the chapter in the Bible about marriage was so clear and direct as the expressions we have in this case; and I cannot approve of the decision in the case of Lindsay if I disapprove of the decision of the Commissaries in this case. I can see that it is often difficult to distinguish between a course of seduction and a promise of marriage subsequente copula. It may be observed, however, that it is a dangerous engine of seduction to talk of marriage at all; and it can be of no use, except to induce the female to yield; and if, in place of vague and general remarks upon marriage in general, applicable to other parties, they apply these expressions to themselves, I should find it difficult by the law of Scotland to say that marriage was not established. This is just the difference between the present case and that of Lindsay. The parties there were speaking of marriage no doubt, but they were speaking of it with reference to other parties; but here the expressions are not about other parties, but about the parties themselves, and in one of the letters he says that she is his wife. I shall not say much on that letter, however, although I agree with your Lordship in the remarks you have made upon it; but I say, in the other letters, he makes a declaration in his own case, which must have been understood as a promise of marriage, and that is followed by intercourse and the birth of two children. I, therefore, am of opinion with your Lordship, that the Commissaries' judgment is well founded. I have not found any case in which a different doctrine has been sanctioned, unless it be the case of Hyslop, which, however, I may say, I think is at least a doubtful decision. I shall not detain your Lordship longer by farther remarks. It appears to me, on the whole, that the Commissaries have decided according to the principles of the law of Scotland, and that this bill of advocation should be refused.

*Lord Cringletie.* — My Lords, it would be extremely wrong in me, after what I have heard, to take up the time of the Court in delivering my opinion. I perfectly agree in the opinion which your Lordship has just heard delivered, and in that of your Lordship, with every word of which I concur. My Lords, I may merely remark, that it is expressly libelled in the summons that the defender did promise to marry the pursuer. There is at the bottom of page 4th of the advocation the most complete libel of a promise of marriage. And then in the conclusion of the summons she says, 'That from facts and circumstances which will be proved it will appear that they are married persons, husband and wife.'

In his correspondence, when he talks of the connexion continuing to be the same, how can that be if they were not married?

As to the word 'wife,' which is said to have been superinduced, I must say that I have eyes as well as an engraver has, and I have looked at that letter earnestly and attentively; and I do think that, if any alteration has been made on it, it has been made by the person who wrote it. That is my impression; and I am sure of it — that is more. Writing is not to be criticised in the way which has been followed by

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2. It is not necessary that there should be a paction or contract to enter into marriage, followed by a copula, to constitute matrimony. If there be a promise, or what the law from evidence holds to be a promise to enter into marriage, and if that be followed by copula, the rule is, that the matrimonial consent has been interposed, and the marriage constituted at the time of the copula. In the present case the written documents, and the facts and circumstances, prove that the parties had nothing else except matrimony in view. The respondent was a person of unimpeached character—of respectable parentage—of good education, and in every respect (except, perhaps, in that of birth,) equal to the appellant. She was entrusted with the charge and education of his six sisters for several years, and the attempt made to depreciate her character utterly failed. The letters previous to

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the engravers; but it is by a general look at the character and appearance of the writing—that is the way in which it is done by a judge. They do not enter into a minute scrutiny of the strokes, and a minute examination of each turn. Suppose any one were asked about my handwriting in this Court, nobody would look at an 'l,' an 'f,' or an 'e,' or an 'r;'—it is by the general appearance that every man judges.

I will show any body in this very letter who chooses to look at it an 'f,' precisely identical with that which occurs in the word 'wife.' The engravers say that other parts of the letter have been gone over as well as this word. Would you say that the pursuer did that too? Would you stultify her when there was no occasion for it? That part of the engravers' testimony, however, would go to prove this. Furthermore, I think it is in perfect consistency with the previous promise of marriage and with the rest of the letter itself. It is the only letter—which is a curiosity—in which he says, 'I dread it being discovered.' Now, I would like to know why he dreaded discovery of this more than the other letters. It would be a discovery, to be sure, that he was married, if it fell into his father's or mother's hands, if the word wife was there; but what do you see in the letter, except that word, more than in the other letters? But I need not take up the time of the Court. I think the correspondence proves, not only that there was a promise, but that the promise was held to be executed.

*Lord Justice-Clerk to Lord Glenlee.*—What does your Lordship say to this letter?

*Lord Glenlee.*—All that I intended to say was, that I do not profess to be a judge as to who had made the vitiation, but that it was vitiated; and being a vitiated document, it was not competent to found upon it, or enter into the question how it had been vitiated.

*Lord Justice-Clerk.*—My Lords, if I were satisfied that it was a forged or vitiated document, I not only would throw it out of view as an argument for the pursuer, but would think it a most important document against her.

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*Note.*—These opinions were taken by a short-hand writer employed by one of the parties. A copy of them is inserted in the Faculty Collection; but, to render this report complete, they have also been introduced here.

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their first connexion show that at least she was made to believe that the appellant's attentions were virtuous and honourable, and the extraordinary fact that he destroyed all her letters immediately previous to the institution of the action demonstrates that she so expressed herself to him, and regarded their union as that resulting from matrimony. Although the words "be-  
"loved wife" are written upon an erasure, yet it appears from the letter itself that that erasure must have been made by the appellant, and the words written by himself; besides, they are in accordance with passages in other letters, where he speaks of "our uncle" and "our aunt."

LORD CHANCELLOR—My Lords, although this case, which is of great importance to the party, has been sought to be made of equal importance to the law of Scotland, I cannot accede to that; for I do not feel that the decision which I shall consider it my duty to recommend your Lordships to give, on the merits of the case, will at all either impeach or affirm any of the known and established doctrines of the Scotch law. I regard it, on the contrary, as a mere question of fact; and it is only in order to protect myself against its being supposed, and to guard your Lordships against its being understood, that what I shall recommend to you, and what you may be pleased to adopt upon my humble recommendation, in any way alters those principles which have been long established as the marriage law of Scotland, and which it is of the utmost importance to preserve unchanged, undisputed, and unambiguous, that I shall state at greater length than I would otherwise do my opinion on the subject.

My Lords, two questions were raised in the Court below, and two questions have accordingly been argued here. The first is, that the summons does not raise the question in a competent shape, inasmuch as it sets forth a marriage per verba de præsenti, and inasmuch as that is abandoned in the evidence, and all the reliance is placed for the respondents (pursuers below) on the promise and subsequent cohabitation. But, on looking into the summons, I find no sufficient foundation for this preliminary objection; and that because there is enough set forth, according to the style in which summonses are oftentimes drawn (though I must say I have not often seen a more inaccurate or more loosely drawn summons than this). In this case the whole matter is brought in, and all the ways in which a party may be married are set forth, without very distinctly specifying on which of those several ways it is that reliance is mainly placed in the latter part of the summons; still within the four corners of the summons, I find enough to let in evidence of

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the kind of marriage now relied upon. The next question, and the only one remaining to be considered, is, whether, in the marriage now relied upon, you have a promise, with a subsequent copula or cohabitation? Now whether the Scotch law is to be continued or not—whether it shall still be the law that so perilous an experiment is to be tried on society, and upon the most impetuous passions of mankind, as enabling two young persons, at twelve and fourteen years of age respectively, (who could not by the law of Scotland, the one for nine years more and the other for seven years more, competently, by the most solemn and deliberate act, affect in any one way a single half-quarter of an acre of their landed property,) to do an act which shall unite them in holy matrimony, create an indissoluble union for life, lead to the procreation of issue, and by that procreation carry to the issue, it may be, of a common prostitute—(I am of course putting an imaginary case)—all the landed estates of which a man can be seised, and all the honours and dignities which a man can inherit from his ancestors; whether it be fitting that in any country such should ever, in common consistency, be the law—whether, in common expediency, it is desirable that this should be the law—and that in one moment, while the passions are excited, and the reason, if ever it has dawned in the young persons at all, is by those passions laid asleep, without the interposition of the least delay to give time for reflection, they should be capable of binding themselves for life by the most solemn of all human contracts, with the largest of all possible municipal and political effects attached to it—whether it be thought fit and proper that this state of things should continue, I do not stop to inquire;—suffice it to say that such is the law of Scotland; and it is as certainly the law of Scotland that a marriage so contracted is valid as it is the law of Scotland that such a marriage is irregular. It is an act to be visited with censures of an ecclesiastical kind—it is an irregular, but it is a valid marriage, and has all the consequences, touching the rights of the parties mutually, and touching the rights of their issue and its legitimacy, which the most solemn marriage, upon the publication of banns, by the greatest divine of the Scottish Church established by law, could draw after it or confer. That is the law, and we are to administer it; we are only to consider in each case whether the facts bring the parties within the scope of that law? Now, marriage is a consensual contract; it is constituted by consent, and consent alone. But there are three various ways in which you have evidence of the consent. There are two kinds of consent as they may be called. One is consent in fact; the other is consent to be presumed by law. The former is either a direct consent *per verba de præsentibus*—a consent mutually given and taken to be man and wife thereafter; or it is that which

March 3, 1831. is evinced by living as husband and wife, and acknowledging each other as such *rebus ipsis et factis*. The other way is that which touches the facts of the present case more immediately, where a promise is given, and a copula follows upon the promise, and is to be taken as not disconnected with that promise; and here the law, *presumptio juris et de jure*, implies consent. A promise, like all other acts, may be proved by two several ways,—either by direct evidence or circumstantial evidence. There may be direct evidence by the testimony of witnesses who heard the promise given. There may be direct evidence in writing, proved to be of the hand of the party giving it. But the promise, like all other facts, may be proved by circumstances. It may be proved, without either witnesses to support it, or the hand-writing to remain on record against the party promising. Circumstances may be proved by evidence—circumstances may be proved by the testimony of witnesses or by written evidence; and if those circumstances are sufficient to convince the Court, trying the question as a matter of fact, that a promise did take place, the promise must be taken to have been made, as much as if it had been established by the other more direct and immediate proof, nay sometimes circumstantial evidence is stronger, and less liable to doubt than direct evidence, inasmuch as it is more difficult to make out a circumstantial case by curiously contrived perjury, than a direct case by a witness, who may take a false oath to the fact. Now, let us see what the evidence is, being not of the direct but of the circumstantial kind, by which we here are called upon to believe, as the Court below did, a promise of marriage by the appellant.

I shall now, my Lords, take the case—sifted by the observations I have taken leave to throw out—as if I were at *Nisi Prius* trying it with a jury, and stating to them the grounds on which their verdict ought to turn. I should then inform them, that there were three matters for their consideration, before being satisfied of which they could not find a verdict for the affirmative of the issue. Stating the issue which had been joined—what is called in English law pleadings, an issue of *ne uncques accouple*,—I should call upon them to consider three particulars;—that they must be satisfied there was a promise, a serious promise, intended as such by the person making it, and accepted as such by the person to whom it was made; that, in the second place, they must be satisfied that there was a cohabitation afterwards; that, in the third place, they must be satisfied that there was no disconnexion between the subsequent cohabitation and the preceding promise (that is the way in which I think I am most safe in stating it) that there is no disconnexion—no *medium impedimentum*,—no evidence to rebut connection,—between the cohabitation

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and the promise. If that disconnexion is not substantiated, the law will take the promise to be connected with the copula. Now here the copula is admitted;—there is no doubt whatever of its having taken place. The disconnexion cannot be set up,—for the time is so short, the circumstances are so little varied, (that is, the circumstances of the parties between the promise and the copula,) the relations in which the parties stood to one another, and all mankind besides, are so precisely the same, that I take it to be quite as clear that there was no disconnexion of the copula with the promise, as it is clear that there was a copula. Then the only question turns on the existence of a promise, and to that I now come in the last place. If the doctrine had been ventilated here, that courtship or other circumstances showing an intention, nay that an intention to marry, however strongly expressed, and however plainly entertained, constituted what may be termed (borrowing an expression familiarly known to the Scotch lawyers) an equipollent to a promise, I should have taken leave to deny the proposition in point of law. The promise must be mutual—both parties must be bound; the marriage to bind one must bind both: there is nothing more plain than the perpetual distinction between an intention to marry and a promise to marry; and the law attaches on the promise followed by the copula, and not on any intention. But courtship is a most material fact in the case, when you are examining whether, from the conduct of the parties, it appears that a promise had actually passed between them. Where persons are on the footing of lovers, when it is well known that love is usually followed by matrimony, that it is naturally incident to the relation of lovers to wish to be married, and that a long course of courtship can hardly have any other object than marriage in view, though the intention to marry will not of itself supply the want of a promise, yet, in seeking for evidence of a promise, the long courtship and the intention make it extremely probable that the parties had received mutual promises of marriage. Therefore, if it stood alone as a mere question of probability, that would carry us a good way towards satisfying the jury (whom I suppose to be trying the cause) that there was a courtship, and a course of love-making, with a view, as it may generally be taken, to matrimony, otherwise it is no courtship between the parties. This however would plainly not be enough. But now, let us see whether the evidence rests here; because if it did I should have been for reversing the judgment. We cannot however quarrel with that judgment when we look at the evidence, for we find, first of all, the strongest expressions of that kind of attachment which springs up between lovers, who can have only a permanent, that is, a matrimonial connexion in view,—“ Love me as I love you, and

March 3, 1831. “ put my heart at rest by assuring me of it ;” and this expression, —“ Farewell, thou in whom all my joys are centered ; my lovely “ Betsy, adieu !” —“ I trust you will never be able to accuse me of “ having a bad heart. Believe me, I would not intentionally hurt “ any one, far less that being for whose happiness I would lay down “ my existence,” —with other expressions I do not single out. Then, was this expression of attachment reciprocal ;—was this tender of the heart in love with a view to a matrimonial connexion, though not promised ?—I am not talking about promise, but courtship.—Was this accepted by the lady ? An answer to that letter must, of course, though the appellant does not produce it, however he may have accounted for it, be more or less satisfactory. I rely not on that. He says, “ I received your most welcome letter this “ morning, my ever dearest Eliza.” Why was it most welcome ? Could it be for any other reason than that she gave her reciprocal affection, and that she gave the offer of her love in return for his ? Then he says, “ Well does it deserve an immediate acknowledg- “ ment ;” for what ? Because it returned his affection :—“ Never “ can I sufficiently thank you for the alacrity which you have dis- “ played.” Here is a second step taken towards the conclusion—there is love—the tender of the heart—a courtship to affirm a connexion ; and that is proof, if any were wanted, under the third head of the observations which I am making. The second step is the acceptance by the lady of the heart or the love of this person. Now come we to the more material parts, for they leave no doubt on my mind of a promise having existed between the parties : “ You will receive this on Monday, and write me soon. God bless “ you, thou dearest girl. Again farewell ; and believe me, with an “ attachment strong as it is pure, yours most affectionately.” That is pure, virtuous love ;—that is courtship, with a view to virtue ;—that is courtship, with a view to matrimony ; and suffer me to add, that we are not merely to consider what may have been,—to speculate on what may have been, the intentions with which he wrote, but we are, according to the observation of Sir William Scott (Lord Stowell), in that admirable judgment on what may be called the leading case in the Scotch law of marriage, though delivered by him in an English suit—we are to consider first what the lover meant by those words, and then how they were likely to be received by the party they were addressed to ; for, can any thing be more monstrously unjust than that a man shall use certain expressions, and then turn round and say, I meant not so, though the party to whom they were used could have affixed to them but one meaning ? Following this remark, how does the correspondence proceed ?—“ Nothing, I trust, will thwart the happiness I look forward to.” Now, I beg your Lordships to attend to this ;—a promise differs from

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verba de præsentī in this, that it contemplates a future period — what I have read I mainly rely on, because it proves it was a contemplation of an after event — intentions however ardent, however strongly expressed — courtship, however direct — asking, however plain and prompt it were — and asking the hand in marriage — they all refer to the present ; but what differs a promise from this thing is, that it has a future reference — it contemplates a future time. Now, your Lordships will observe, these expressions all sound in future : “ Nothing, I trust, will thwart the happiness” I possess — I enjoy — I prize ; — words of present meaning ? — no such thing, — “ the happiness I look forward to,” that is future, — “ nothing shall — nothing can — for it is felicity sanctioned by virtue herself, and every thing that is tender and amiable.” Can any man read these words, and not affix this plain meaning to them, that she was to look forward ; and he told her that he looked forward to nothing else but marrying her, and that virtue itself would sanction that pure affection and those pure enjoyments only in the state of matrimony, which alone he plainly contemplates. Can I wonder if the lady construed (according to Sir William Scott’s doctrine in *Dalrymple v. Dalrymple*) this as a direct promise ? But though I don’t take it now as a direct promise in itself, yet it is the strongest evidence that they were on the footing of a party promising, and a party to whom a promise was made at this period, before the cohabitation had taken place. I don’t accede to what Lord Glenlee lays down, in a doubtful sort of judgment, that if the first part of this passage stood alone, it would have gone far ; but he rejects it entirely for what follows — “ Every thing that is tender and amiable” — he says that is nonsense, and is a violent, trashy expression. With great submission to that learned and excellent Judge, I don’t think that is so accurate and philosophical a view of the subject as his Lordship is wont to take in other inquiries. I do not think adding “ tender and amiable” to the expression of “ felicity, sanctioned by virtue herself,” will enable me to get rid of the plain and manifest tendency of the expression — “ In offering you, my best beloved, that heart which has for a long time been devoted to you,” (this is in the same letter in which he thanks her for accepting his love) “ I have only to lament that it is not a more deserving gift to her to whom it is offered. We will talk over the future when we meet.” Could any one think this meant any thing but future marriage ? What were they to talk over ? — cohabitation, fornication ? No ; they were to talk of their pure affection, sanctioned by virtue itself. The future was the matrimonial future, and clearly could mean nothing else. Then we have again — “ You deprive me, thou who art the most dear of thy endearing sex, of a very great pleasure, by prohibiting my delivering your letters



March 3, 1881. "to our uncle:" Then comes, "You have now no embraces  
"for any one else, not even for aunt Fraser or sister Anne; I call  
"them so, for your aunt is my aunt, and your sister my sister."  
Now, added to all that, I import from the subsequent letters into  
this consideration of the case the joy and the interest he takes  
when she appears to be with child, when he was looking forward  
to the birth of that infant,— "I must be with you to comfort and  
"soothe you, and to partake of the joy such an event will excite."  
And he is anticipating the happiness, in another letter, of seeing all  
the schemes he had formed realized. Now, this is the expression  
of a person who looked forward to a matrimonial joy; and these  
expressions, as to the birth of a child, must mean, that he looked  
forward to that being his legitimate child, and not his bastard.  
Looking at all these letters, taking them all together, I can read  
them in no other way than as letters passing from one man to  
one woman, who had avowedly been in courtship—who had plainly  
been in courtship with a good view—and who had promised each  
other marriage, which there was an obvious and a satisfactory  
reason for deferring until a future period—I mean till the death  
of his father, who was then an old man, and who, very possibly,  
might view this as an unseemly, if not as an inferior or degrading  
connexion. My Lords, I beg to say, that I should differ with him,  
if he so regarded it. I desire to be understood as saying, that  
this lady's conduct stands as pure and unimpeached as that of  
any party who ever came to this Bar. I desire to have it under-  
stood as no part of my opinion, that my Lord Armadale's son, or  
Sir William Honyman's son, even if he had been a wealthy baronet  
instead of one in moderate circumstances, would have been at all  
degraded by forming a virtuous connexion in marriage with a lady  
who had been governess to his sisters—of whose accomplishments I  
have his own admission—whose charms he is the loudest to speak  
forth—and whose virtue,—whose purity of character, is entirely  
unimpeached by the evidence, the result of all the scrutiny to  
which it has been subjected.

But, if there was any doubt or ambiguity as to the meaning of the  
previous expressions, the copula which follows will carry us far out  
of the scope of that doubt; for I desire to be distinctly under-  
stood as acceding to the doctrine, that where persons are in court-  
ship—though courtship is not a promise—and where ambiguous  
expressions may have been used, and where an offer of love may  
have been made on the one hand, and accepted on the other, that  
which is doubtful will become certain, and that, if there is great  
probability of a promise having taken place, that probability may  
be turned into a certainty by the copula which follows; and, for this  
plain and obvious reason, that the woman, in these circumstances,

does not yield her virtue for nothing ;—I assume that she gets that consideration for it, precisely as I would assume, if I had a doubt about the evidence of a common contract for the purchase or sale of merchandise, when I saw one party paying the price—if there were an ambiguity as to whether the price was stipulated—I should consider that that ambiguity was removed by the fact of its being paid. In holding this doctrine—for which I know not that I have the warrant either of the dictum of any Judge, or the authority of any text-writer, or of one decided case on the law of Scotland, in this House—I know that I am following out the principles on which the Scotch law is founded—I know that I am laying down a rule which is of a wholesome and efficacious tendency in respect to the contract of marriage. These are the grounds, my Lords, and the reasons which I have gone into at more length than I should otherwise have deemed it necessary to do, in moving the affirmance of the judgment. I take leave to submit, that there is sufficient evidence to establish marriage in this case. I have laid purposely out of view the letter where the word “wife” has been mentioned—and I have laid it out of my view, because there is nothing on the face of the instrument which has been given to explain the erasure favourable to the party into whose custody it came from the party in whose power it had been. I therefore rest my opinion—which is to advise your Lordships to affirm this judgment—on the other facts of the case, which are sufficient, notwithstanding the two circumstances which I think were unfavourable, and which, I think, did cast a shadow of doubt over the question at different parts of the argument. I mean, in the first place, the letter, and the non-production of the evidence referred to in that letter, and which leaves in my mind some doubt whether this unhappy woman, reduced to the greatest difficulties, burthened with children whom the appellant seems to have had no very great inclination to support, and denied the rights of a wife to which she deemed herself entitled, did not, probably under the bad advice of some female friend, put forth a stronger case, by way of intimidation, than she really had. That unsuccessful attempt I will dismiss from my judgment, if I see evidence, independent of it, to satisfy me that she had a good case. I have not lived so long in Courts of justice not to have observed that a good case is often marred by trying to make it better through the contrivance of parties, or the zeal of their supporters. The other point which I would advert to, as having cast the case into a shade of doubt, is, that a good deal of correspondence took place, in which she asked for money in the most touching and painful manner, and alluded to the children and to the connexion that had subsisted between them; and yet, though the footing on which they

March 3, 1831. ought to stand must have been present to her mind, no claim for the rights of a wife is put forth in her letters. I look upon that as another unfortunate circumstance in her case—more unfortunate than the former, and tending to raise more doubt. But she may have been ignorant of the law, and ignorant of her rights, as she says her herself; and her ignorance of her legal rights does not impeach them, nor impede her in the course she takes to have them established. My Lords, these are the grounds on which I rest my opinion, and upon which I call upon the House to affirm the judgment. I think it my duty to mention, that I have said thus much with respect to the lady's character for her vindication certainly, but also for the sake of the appellant. She is now his lawful wife;—she is as much his wife by the law of Scotland, as if the marriage had never been disputed; and every thing that sets up her character takes off any imputation that, in the heat of argument, at one time (not here, but elsewhere,) may have been flung at her. I feel anxious that this should be removed, which I have therefore endeavoured to do. I will say for him, (and in saying so I say it for her who is now his wife as much as if she had been publicly and openly married to him, and there never had been any dispute about the validity of the contract,) that though he may have acted harshly—though he may have acted lightly towards her—he may have been over-persuaded, by the foolish pride of relatives who thought themselves his friends, to refuse acknowledging this lady as his wife; but he is a very young man, and he may have been irritated, perhaps, by some sinister influence, perhaps by bad health; and therefore we ought to look upon his conduct with as much tenderness as possible. Under all the circumstances, I trust, therefore, that he and his wife will be allowed to go from this Bar without a single injurious aspersion remaining on their characters in consequence of any thing that has taken place. I say nothing about costs. She is his wife, and she is not liable to costs. For her costs he is liable of course.

The House of Lords ordered and adjudged, That the interlocutor complained of be affirmed.

*Appellant's Authorities.*—Cunninghame, July 20, 1814, (2 Dow, p. 511); Forbes, June 20, 1811, (1 Dow, 188); Campbell, November 28, 1801 (1,697); Johnstone, November 18, 1766 (12,681); Anderson, November 13, 1795 (12,690); Cunningham, July 20, 1814, (2 Dow, p. 482); Sassen, June 22, 1824; Ersk. I. 6, 34; Vin. Inst. p. 51; Ersk. I. 6, 3 & 4; Craig, II. 18, 19; Dirleton's Doubts and Stewart's Answers, v. Marriage, p. 200, 278; Stair, I. 4, 6; Bank. I. 5,-

2. 22; Ersk. III. 2, 1; Hislop, July 15, 1696 (13,908); Buchanan, June 16, 1785 (13,918); Linning, December 14, 1748 (13,909); Ferguson's Consistorial Law, p. 163; Pennycook, December 15, 1752 (12,677); Smith, June 27, 1755 (12,391); Stewart v. Lindsay (not rep.)\*

*Respondent's Authorities*—Ersk. II. 2, 1; Pennycook, 1752 (12,777); Smith, June 27, 1755 (12,391); 2 Haggard, pp. 76, 106, 128.

SPOTTISWOODE and ROBERTSON—ALEX. DOBIE,—Solicitors.

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\* In this case the defender was an excise officer. He had lodged for years with the pursuer's mother, which led to a close and intimate connexion between the parties; and in the course of a long courtship, he was proved, on his own admission, to have made various attempts to prevail on the pursuer to allow him the privileges of a husband. Those attempts the pursuer had uniformly resisted, telling him, as he also admitted, that he had no affection for her, else he could never think of asking such a thing. In the scruples thus expressed he for some time acquiesced; but afterwards he endeavoured to impress her in various ways with a belief, that in the relation in which they stood towards one another, there was neither sin nor impropriety in the connexion. In the course of these conversations there was much talk of marriage, and he admitted that he had particularly referred the pursuer to the 7th chapter of Corinthians, which is wholly taken up with the duties of married persons. He admitted further, that both to the pursuer and her mother he had alluded to the annuity, to which, as an exciseman's widow, she would be entitled at his death; and more particularly, he put into their hands the book which contained the schemes of these annuities, and the list of subscribers to the fund, (in which list his own name was inserted,) and said, "she would see what she would have if she were a gauger's widow." In his examinations he prevaricated, and made inconsistent statements. The Court, putting all these things together, were of opinion that there was a positive engagement to marry, and that—the pursuer having resisted all inducements to surrender her person until, from the chapter of scripture to which she was referred, and other circumstances, she was led into the belief, that every thing had passed between her and the defender except the actual ceremony of marriage,—effect must, therefore, be given to the copula which had taken place in this belief, as drawing back to, and consummating the previous engagement. See also notice of this case, ante page 133.

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