

"THE LORDS refused the bill, and remitted the cause to the Commissaries *simpliciter*." No 582.

Reporter, *Kames*. Act. —. Alt. *Alex. Murray*. Clerk, —.

*Fol. Dic. v. 4. p. 169. Fac. Col. No 46. p. 81.*

1774. February 15.

CLUDEN against CULTER.

No 583.

IN a declarator of marriage, the man in defence accused the woman of incontinency. THE LORDS adhered to an interlocutor of the Commissaries, refusing a proof of the allegation *in hoc statu*, reserving the same till the pursuer should establish her marriage. In this case, no actual celebration was libelled on, but a written declaration and subsequent *copula*. See APPENDIX.

*Fol. Dic. v. 4. p. 171.*

1781. December 20.

JANET MACINNES, Widow of Captain Fairbairn of the 62d Regiment of Foot, against ALEXANDER MORE, Son of Gilbert More, Merchant and Manufacturer in Aberdeen.

IN consequence of an intercourse which had taken place between Alexander More and Janet Macinnes, the former being only in the twenty-fourth year of his age, while the latter was in the thirty-seventh of hers, the lady fell with child. Her situation having been discovered by some of her relations, who interested themselves in her behalf, one of them, in particular, a Captain Grant, furnished her with a draught of a letter, containing an acknowledgment of marriage, which was copied over, and subscribed by More, as follows: "Mrs Fairbairn, I hereby acknowledge, that you are my lawful wife; and you may, from this date, use my name, though, for particular reasons, I wish our marriage kept private for some time; and always am, Madam, your most obedient servant, (Signed) ALEX. MORE. Aberdeen, 1st May 1780.—Addressed, To Mrs Captain Fairbairn, Aberdeen." This letter, however, was antedated, for it was not written till the month of November 1780.

AFTERWARDS the lady instituted against More, before the Commissary-court, an action of declarator of marriage. Having been judicially examined at the pursuer's request, the defender emitted a declaration, of which, in substance, the import is, That his connection with her was the result of the most forward and seducing advances on her part: That he had never entertained any idea of making her his wife; had not once spoken a word to her capable of such a meaning; nor had she herself, till of late, any expectation of that kind: That

No 584.

If a written acknowledgment of marriage may be defeated by a judicial declaration of the party who made it, certain collateral circumstances concurring?