Young junior acquiesced in this, and that the said £200 bill was renewed and retired for that object; but, Finds that James Young junior has not only deponed, when examined as a witness *in causa*, that he never gave any such assent, but has added that at the end of 1863 he sent the defender an account showing the state of his transactions with the firm, which state was made up on the footing that the defender was to be paid only 10s. in the pound of the father's debt, and that the defender made no objections to the state: Finds that this evidence is corroborated by other testimony, and there is no proof that the pursuers, as a firm, agreed that the old debt should be paid in full: Finds that, in these circumstances, it has been correctly found by the Sheriff-substitute that the defender is barred from pleading his own corrupt bargain with James Young senior as entitling him to throw the composition-contract overboard, and if he cannot do so, then he has been paid all he can claim in respect of James Young senior's debt, and he is still resting-owing, under the said two bills, the above-mentioned quantity of tallow, or its value: Finds that in the interlocutor appealed against the defender has been *per incuriam* ordained to give delivery of the whole quantity of tallow, said to have been originally contracted for, viz., 84 cwts. 1 qr. and 18 lbs., without crediting him with the 38 cwts. 3 qrs. and 17 lbs., receipt of which is acknowledged in the summons: Therefore, so far alters the said interlocutor, and ordains the defender to deliver to the pursuers, within three weeks, 45 cwts. 2 qrs. and 1 lb. tallow, with certification that, failing his doing so, decree will be given against him for the sum of £81, 18s., as the value of said tallow: *Quoad ultra* adheres to said interlocutor; dismisses the appeal," &c.

The defender advocated.

WATSON and MACLEAN for advocator.

SHAND and BRAND for respondents.

The Court adhered. They held that the defender, as founding on the illegal arrangement alleged on record, could not have effect given to his averments without proving that arrangement, even supposing that arrangement, if proved, to be a good defence to the action. But he had entirely failed to prove the arrangement, though he had been examined four or five times in the course of the proof; while, on the other hand, the pursuers gave evidence to the effect that there was no such illegal arrangement as the defender represented.

Agents for Advocator—Graham & Johnston, W.S.

Agent for Respondents—A. K. Mackie, S.S.C.

Thursday, February 18.

FLEMING *v.* FOSTER.

Expenses—Husband and Wife—Declarator of Marriage. In a declaratorof marriage the pursuer founded on a written acknowledgment of marriage, the authenticity of which was denied by the defender. The Lord Ordinary found the marriage proved. The defender reclaimed. Before the reclaiming note was heard, the pursuer (respondent) moved for an interim award of expenses. The defender opposed. The Court awarded £10, 10s. to enable the pursuer to defend the judgment of the Lord Ordinary.

This was a declarator of marriage, in which the pursuer founded, *inter alia*, on a written acknowledgment of marriage subscribed by her and by the defender on the fly-leaf of a bible. The defender denied the authenticity of the writing. The Lord Ordinary, after a proof, found the marriage proved.

The defender reclaimed.

KEIR, for the pursuer, asked an interim award of expenses.

ASHER, for the defender, argued that such a motion was never granted, unless there was (1) a written acknowledgment, the authenticity of which was admitted, and (2) a recognition by the defender of the pursuer's status as his wife, neither of which, he contended, was found here; *Sassen* v. *Campbell*, 20th Jan. 1819, F. C.; *Brown* v. *Burns*, 5 D. 1288; and *Fleming* v. *Corbet*, 21 D. 179, were cited.

At advising—

LORD PRESIDENT—The cases of *Sassen* and *Brown* are not in point.

To grant interim aliment to the pursuer of a declarator of marriage is always a very strong thing, for that is an interim recognition of her status as a married woman; but the motion here is for a sum to enable the pursuer to proceed with her action, and to defend the judgment of the Lord Ordinary. That is a much more favourable position than the other. I do not understand the pursuer's claim to be for a sum of money to cover the expenses already incurred. If that were the motion, I should not be prepared to entertain it; but I understand it to be a motion for a sum of money to be employed in defending the judgment of the Lord Ordinary, and that carries a good deal of appearance of equity with it. I don't think there is anything in the case of *Fleming* inconsistent with that. That was a case where the motion was made in a peculiar position of matters. The pursuer held a judgment of the Lord Ordinary in her favour, but when the case was heard on the reclaiming note, there being then no motion for expenses, the Court found that they could not pronounce judgment on the case as it stood, opened up the record and concluded proof, and remitted to the commissary for farther proof. It was after that that the pursuer made a motion for expenses, and in these circumstances the pursuer could not represent herself as being in possession of the judgment of the Lord Ordinary, for that judgment, though not formally recalled, was practically no longer a standing judgment. Besides, though the writing on which the pursuer founded was said to be dated in 1850, she made no claim for status until 1857, and in the meantime she had dealt with herself and her children as the mistress and the bastard children of the defender. But in the present case the circumstances are very different. All the length I am disposed to go, however, is to make such an award as will enable the pursuer to instruct her counsel and agent for opposing the reclaiming note, and I think £10, 10s. is sufficient for that purpose.

The other Judges concurred.

Agents for Pursuer—Macdonald & Roger, S.S.C.

Agents for Defender—Adam, Kirk, & Robertson, W.S.

Friday, February 19.

MAGISTRATES OF KILMARNOCK *v.* MATHER.

Title to Sue—Sheriff-court Act 1853*—Burgh—Customs—Decree in Absence—Usage.* Magistrates of a burgh sued a tradesman for certain customs per account, &c., "which the pursuers