

Mar. 12. 1823. prepared will preserve whole the jurisdiction of this House with respect to the merits, guarding only against the effects of surprise; meaning, however, to take care that, by an order to be entered in the standing orders of the House, no such neglect shall again happen upon the part of those who are called upon to discuss the original question.

J. CHALMER,—FRASER,—SPOTTISWOODE and ROBERTSON,—  
Solicitors.

(*No Papers.*)

No. 58. GEORGE REID, Appellant.—*Wetherell—Lushington—Fullerton.*  
JEAN LAING, Respondent.—*Gifford—Forsyth—Moncreiff.*

*Marriage—Proof.*—Circumstances under which it was held, (affirming the judgment of the Court of Session,) that a marriage had been constituted by a promise *subsequente copulâ.*

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2<sup>D</sup> DIVISION.  
Lord Robert-  
son.

THE respondent Jean Laing, the daughter of a country labourer on the estate of Ratho-bank, the property of the appellant Mr. Reid, brought a declarator of marriage against him in 1817, stating, ‘ that for some years prior to the year 1808, George Reid, Esq. of Ratho-bank in the parish of Ratho and county of Edinburgh, made his addresses to the pursuer, professing the most sincere love and regard for her, and his purpose and intention of marrying the pursuer, which he frequently repeated, and thereby so far gained the pursuer’s affection, that she consented to intermarry with him:’—that accordingly they exchanged written declarations of marriage on the 18th of October 1808, and that in consequence they had acted as man and wife, but that he now refused to acknowledge her as such; and therefore she concluded to have it found that they were lawfully married persons, and that he should be ordained to adhere to her as his lawful spouse. The document on which she libelled was thus expressed: ‘ I hereby engage to be a true, a faithful, a kind, and an affectionate husband to you, on conditions you are the same to me; and I further engage to show this to no person, and to make it known to nobody whatever, without your consent. (Signed) George Reid, October 18. 1808.’

In further support of this action, she produced a great number of letters from Mr. Reid, expressed in language of the warmest affection, and occasionally of extravagant enthusiasm; and she alleged that, on the faith that she was constituted his lawful wife,

she had, after the above declaration, admitted him to the privileges of a husband. May 14. 1823.

From that correspondence, and from the evidence taken in the course of the proceedings, it appeared that their intimacy had commenced in the year 1802, at which time she was a servant in the house of Mr. Reid. As his attentions to her were not agreeable to his mother and sisters, (who resided with him,) she engaged herself as a servant to a lady in Hope-street of Edinburgh, distant about six miles from Ratho-bank; and she alleged that, before going there, he gave her the above-written declaration, and that she at the same time delivered to him one of the same description—a fact which he admitted on oath. She remained in Hope-street from Martinmas 1808 till Martinmas 1811, during which period Mr. Reid frequently visited her, and sent numerous letters to her. In particular he wrote to her, that ‘ I am certainly much obliged to my dearest for her kind and interesting letter of Saturday last. Instead of making apologies, you made me proud by the way in which you addressed me. You speak of my faithfulness and constancy: Is it possible that I ever can forget the many sweet and anxious hours that have passed between us—the many strange adventures we have had—the many stratagems we have fallen on to meet together, in all of which we succeeded? Often do I gaze, with silent admiration, on the very spots where we met. Nay, the very windows from which you used to exchange looks with me, derive an additional value from the recollection of the feelings they used to excite, and the lovely object they used to contain. The romantic idea of your looking at a certain hour from R—— window to me in my garden shall never be obliterated from my mind. I beheld your delightful vision to-day as I passed, I am to dine at Leith to-day, and intend leaving it at seven o’clock, so as to meet you at eight o’clock. I hope it will be convenient for you to see me at that time. I will be at the same place we met at before at eight, but wait till half past eight, in case I should be kept. Meantime, my dearest wife, I remain your unalterable, &c. In another letter he addressed her thus:—‘ My dear sweet delightful creature, if it were possible, I am ten thousand times more attached to you than ever. I ask your pardon, if I did any thing to offend your feelings the last night. You well know that I feel doubly anything that hurts you. Your goodness, your sweetness, has raised you much higher indeed in my estimation. I hope you will give me a double display of your attachment to me to-morrow, and I certainly shall do the same

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‘ to you, &c. Farewell, my dearly beloved. Accept a few apples  
‘ from your garden. Remember your husband,’ &c.

After having passed a night with her in Hope-street, he wrote to her on the following morning:—‘ Night had withdrawn her  
‘ sable curtain, and gloom had descended from the throne of  
‘ nature, when I parted with my love. The stillness and magni-  
‘ ficence of the scene—the silent abbeys—the spires appearing be-  
‘ tween me and the horizon filled my mind with the most sublime  
‘ ideas. I only wanted the company of the dear object of my  
‘ affection to make me completely happy. In parting with you  
‘ this morning, I forgot to fix the time I was to pass your way ; I  
‘ therefore write this on purpose to tell you I am to pass from  
‘ eleven to a quarter past eleven o’clock ; it will be as near eleven  
‘ as I can.’

In another letter he wrote to her:—‘ As the hart panteth  
‘ after water brooks in a desert land, so panteth my heart after  
‘ thee, O my beloved ! I sit down with mingled emotions of  
‘ delight and sorrow to unbosom myself to my love, and to  
‘ pour forth the anguish of my soul, torn with the most violent  
‘ sensations of love, heightened by the thoughts of the darling  
‘ object of all my wishes torn from my embraces, and placed  
‘ at a cruel distance from my view—sometimes perplexed with  
‘ the idea that, removed from my protection, she may be ex-  
‘ posed to the rude attacks and insults of other men, and separ-  
‘ ated from all the endearments which would result from the  
‘ exercise of mutual affection between two congenial souls, framed  
‘ and moulded by nature to make each other happy. Two  
‘ such souls united, and living together with the most perfect  
‘ unanimity of heart and sentiments, would enjoy happiness flow-  
‘ ing from the reciprocal exchange of kind offices, and the con-  
‘ stant exercise of sympathy, esteem, and love, which no human  
‘ language can describe, nor the boldest imagination conceive.  
‘ It is the absence of these pleasures, and the dread of those evils,  
‘ which often drives happiness from my dwelling, and makes this  
‘ world, without you, appear to me a wild chaos, a solitary desert.’

After proceeding for some time in the same terms, he concluded with making an appointment to meet her that night. In another letter which he wrote, to apologize for not being able to keep an appointment with her, he addressed her thus:—‘ My  
‘ dear sweet Jane, I thought I should never have seen you yes-  
‘ terday ; at length, when I was going to depart, I beheld a figure  
‘ approaching me, which at first sight I fancied akin to myself,  
‘ but did not believe it was you, carrying the water-stoups, until

‘ you neared me, when, to my surprise, I beheld your dear and  
 ‘ blooming face. You would think I looked shy ; but the fact is,  
 ‘ I was overpowered with astonishment, but durst not look kind,  
 ‘ as your mother was at the door reconnoitring,’ &c.—‘ Yes, I  
 ‘ think the scene will be darkened, and the moon will cease to  
 ‘ give her light, when you forsake me; at least I may say that both  
 ‘ these orbs will cease to shine on me—the sun himself grow dim  
 ‘ with age, and nature sink in years, when that event takes place.  
 ‘ But no—it cannot be—it will not be. I never saw you look half  
 ‘ so well, nor so stylish, in my life ; you was uncommonly smart  
 ‘ about the neck,’ &c.

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In reference, again, to another meeting which he had with her, he wrote, that ‘ we had a most divine evening, spent in  
 ‘ a most amiable and enchanting manner, on Sunday ; I will not  
 ‘ soon forget it. Farewell, my beloved.’ And on a similar occasion he again wrote to her, that ‘ after spending one of the most  
 ‘ transporting nights of my life, I drove home in the most pleasant  
 ‘ manner imaginable. The cocks were crowing, and already the  
 ‘ distant hills were tinged by the glare of the morning’s dawn.  
 ‘ There was no moon-light; otherwise I would have called for you  
 ‘ in the evening ; but intend seeing you either on Tuesday or  
 ‘ Wednesday next.’

After leaving the service of the lady in Hope-street, the pursuer, between 1811 and 1816, was in the service of different families in Edinburgh and its vicinity, and during that period Mr. Reid was in the habit of writing to her in the same manner, enjoining her to be faithful, and promising fidelity, and also visiting her repeatedly.

At last, in 1816, she became desirous to have their marriage solemnized ; and he having expressed a wish to have it still kept secret, she wrote to him this letter :—‘ As you have considered  
 ‘ me your wife, I agree to a privet solemnizing our marag on  
 ‘ Wednesday fortnight ; and I concent to keep this agreement  
 ‘ sectret till a reasonable tim, which I expect you to limit when  
 ‘ you write on Wednesday: I remain your affect. wife, (signed)  
 ‘ Jean Laing.

‘ If these lines do not meet your concent, I can give no other:  
 ‘ I have no occasion to bind myself to a new misery. It is my  
 ‘ earnest wish to look into your interest as much as my nown ;  
 ‘ and if it is to serve you any advantage for me to stay in my  
 ‘ place for a short time, I am agreeable ; but you` must fix a time,  
 ‘ for you may never find it convenit. I hope you will com for-  
 ‘ ward in honour on Wednesday fortnight ; if not, you need not

May 14. 1823. ‘plead an other excuse, for I am in no ways entrested which way  
‘it gos; but at that time it will be settled.’

In defence against the action Mr. Reid pleaded,—1. That there was no proof of a *de presenti* consent to marriage; but that the mutual declarations and correspondence amounted only to a promise of marriage *de futuro*;—and, 2. That he denied that there had been any copula consequent upon that promise.

The Commissaries appointed Mr. Reid to be judicially examined, and thereafter appointed the pursuer to give in a condescence of what she averred as to a copula having taken place. She accordingly stated, that, one night in November 1808, Mr. Reid had connexion with her in a house belonging to himself at Ratho. As to this, he admitted in his declaration that they had gone together into that house, which was not finished, and not inhabited—that there was no light in it—that they remained together an hour, or an hour and a half; but stated that the only freedom which he took with her, was ‘kissing and that kind of ‘thing.’ She further alleged that he had connexion with her when she was residing in Hope-street; and accordingly two witnesses deponed that he was in the practice of visiting her often in the evenings, remaining with her the greater part of the night; and that, on one occasion in particular, the bed which was in the room where they were, had the appearance of having been slept in by two persons. She also averred that the same thing had occurred in the houses in which she was subsequently a servant; and he admitted in his declaration, that on one occasion ‘he slept in ‘bed there that night, and the pursuer was for some time with ‘him in his bed-room, and sat with him upon the front of the bed ‘for some time, but they did not lie down together, and she went ‘away to her own bed before the declarant lay down;’ and that there was no other person in the house.

The Commissaries decerned and declared in terms of the libel; and Mr. Reid having thereupon presented a bill of advocation, the Lord Ordinary, after advising with the Court, refused it; and to this judgment their Lordships adhered, on the 26th of June and 20th of November 1819. \*

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\* Not reported.—It is stated in the Respondent’s Appeal Case, p. 5, that ‘when ‘the bill of advocation and answers were advised, the whole five Inner-House ‘Judges were present. Four of the Judges stated, that, in their opinion, the case ‘was attended with no sort of difficulty; that some argument might no doubt be ‘made about the question, whether the expressions used in what are called the mar-

Against these judgments Mr. Reid appealed, and contended,— May 14. 1823.

1. That, in order to constitute marriage, there must be an actual *de presenti* consent immediately to enter into the marriage state, and from that moment to become husband and wife:—that if the expressions which are employed have reference to the future, then the document in which they are contained will amount merely to a promise of marriage; and that even although these expressions bear that a *de presenti* consent has been given, yet, unless uttered *in facie ecclesiæ*, their meaning may be controlled by other expressions, or by the circumstances under which they were uttered or written, and by the accompanying acts and deeds of the parties:—that, according to these principles, the declaration founded on was a mere promise, because it was prospective, bearing merely a promise ‘*to be* a true, faithful, and affectionate husband,’ upon the condition that she would promise *to be* a faithful wife to him:—that, besides, there was a stipulation that this promise should not be made known to any one till a future period, thereby indicating that there was to be a future public matrimonial consent; so that the declaration could no more constitute marriage than an antenuptial contract, which invariably expressed a *de presenti* consent, but was not held to infer marriage, as it was the intention

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‘riage lines, or acknowledgments of 1808, form or amount in strictness to a consent *de presenti*, or only to a promise of marriage; and that if the question rested there, it might perhaps be proper to allow further discussion; but this was unnecessary, because from the evidence it was impossible to doubt the fact, that matrimonial intercourse had occurred between the parties; and therefore there was here proof of marriage constituted by a promise of marriage, copulâ subsequente. One Judge, Lord Craigie, expressed shortly a different opinion, and in particular stated that he was not convinced concerning the existence of the matrimonial intercourse.’ It is also mentioned, that ‘when the cause came to be advised by the Court for the last time, the same majority of their Lordships again stated their opinion to remain unaltered, and no less clear than formerly. On this occasion Lord Craigie, who had formerly dissented from the opinion of the rest of the Judges, now stated that his own opinion was altered, and that his Lordship now entirely concurred with the rest of the Court. The presiding Judge thereupon remarked, that although he had rested his opinion on the clear proof of a promise of marriage subsequente copula, yet he by no means intended to say that the argument was ill founded—that there was evidence before the Court of marriage by consent *de presenti*—that all that had been said to the contrary amounted just to this, that in certain cases it had been held that such written acknowledgments of marriage may be counteracted by proof—that they were framed by the parties with the view merely of imposing upon the world, and not as a serious act between themselves, in relation to which they were truly in earnest; but that there was no authority for saying, that in any case it had been held that an acknowledgment in writing is not a conclusive form of constituting marriage, providing that, as in this case, the parties had acted seriously, and with a view to a matrimonial engagement.’

May 14. 1823. to solemnize it publicly :—that, supposing the words were capable of a *de presenti* interpretation, still they ought to be controlled by the terms of the subsequent correspondence, which was expressed more in the language of high-flown and enthusiastic courtship, than in that which is the usual style of correspondence between man and wife ; and that accordingly her letter of 1816 was quite inconsistent with the idea of a marriage having actually taken place : And,—

2. That the evidence which had been produced of sexual intercourse was quite insufficient, and that it was contradicted by her own conduct ; for she never pretended, throughout the whole correspondence, that she had any claim upon him as her husband, arising from such a circumstance.

To this it was answered,—

1. That the terms of the declaration were in themselves sufficiently explicit to establish a *de presenti* consent ; and if any doubt existed, it was removed by the subsequent correspondence, in which he called her his ‘ dearest wife,’ and subscribed himself as her ‘ affectionate husband :’ And,—

2. That as it was unquestionably a promise, and there was conclusive evidence of subsequent connexion between them, a valid and binding marriage had been established.

The House of Lords ‘ ordered and adjudged, that the said ‘ petition and appeal be, and is hereby dismissed this House ; and ‘ that the said interlocutors therein complained of be, and the ‘ same are hereby affirmed : And it is further ordered, that the ‘ appellant do pay or cause to be paid to the said respondent the ‘ sum of £350 for her costs in respect of the said appeal.’

LORD CHANCELLOR.—My Lords, the only question in this case is, Whether this judgment should be affirmed ? After hearing the very able argument of the learned counsel for the appellant, the rule of the House would dispense with my troubling your Lordships at all, because I am perfectly clear that the decision which has been first given in the Consistory Court in Scotland, and which has been twice affirmed by the Judges of the Court of Session in Edinburgh—the learned persons forming the Consistory Court in Scotland, and the learned Judges of the Court of Session, being probably much better judges in this matter than I am,—is well founded, and ought to be affirmed.

My Lords, the case has been very justly stated to be a case such as, if the copula did not take place, probably never occurred in this world before ; and I am persuaded I am pretty well founded in saying, that such a case, upon such a supposition, will never probably occur in this world again. I am not, therefore, much afraid of making a precedent. My

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Lords, I agree perfectly with what has been stated, that we do not sit here as a Court to observe upon the moral or immoral conduct of any man ; but, in discussing what we are to do in the matter of costs in the cause, we must look to what appears to have taken place, collecting what has taken place from the proceedings in the cause, and looking at the honesty and integrity with which the defence has been made.

Now, my Lords, the summons in this case is one which appears to me, I confess, to have enough of allegation in it. I need not read it to your Lordships ; but it states generally that Mr. Reid (who has been represented, I think, at the Bar, at the period when this courtship, or whatever you may call it, first began, as nearer forty years than thirty,—this girl being at that time about eighteen or nineteen) made his visits, as the summons says, to the pursuer, professing the most sincere love, esteem, and regard for her,—(and, to be sure, if you are to judge from his letters, there are love, esteem, and regard for her strongly expressed, though, I am afraid, not very sincerely expressed,)—and his purpose and intention of marrying her, which he frequently repeated, and thereby so far gained the pursuer's affection, that she consented to intermarry with him, but that he was desirous that it should not be a public marriage ; that the parties then solemnly agreed to accept each other as husband and wife, and owned and acknowledged each other as such in the course of the written correspondence which passed between them ; that he insisted upon the pursuer's exchanging with him lines or written declarations of their marriage ; and accordingly, upon the 18th of October 1808, they did interchange lines or written declarations of marriage ; and the acknowledgment or declaration which he delivered to the pursuer is in these words—I will read them to your Lordships :—‘ I hereby engage to be a true, a faithful, a kind, and an affectionate husband to you, on conditions you are the same to me ;’ that is, if you are a faithful and affectionate wife, we are to suppose, under the same conditions : ‘ And I further engage to show this to no person, and to make it known to nobody whatever, without your consent.’ This is signed ‘ George Reid,’ and is dated the 18th of October 1808. I will call your Lordships' attention to what is said about that date in another part of the proceedings. The summons then proceeds to state that they conducted themselves as man and wife, and the defender oftentimes solemnly avowed and repeated to the pursuer the declaration contained in the holograph acknowledgment or declaration, not only verbally, but also in the course of a correspondence by letters which passed between the parties, and, as far as was consistent with the plan of secrecy laid down by him, cohabited with her, and so on. Then there is the usual prayer of such a summons.

Now, your Lordships will find that it is an admitted fact, that this gentleman did deliver to her a paper in the words which I have read, and it has the signature, as I understand, unquestionably of Mr. George Reid. The date, your Lordships will find from what I have to state hereafter, was probably affixed to this paper, not by him, but was, with a view which he seems to acknowledge, withheld from the paper. The summons



May 14. 1823. does not contain the statement of what was given by the woman to him, but we collect something from his examination as a haver, which examination, I take it, was made on the 28th November 1817, and in which, your Lordships will recollect, it did appear that when this woman wrote these letters to him, when she began to insist upon having their marriage publicly acknowledged or publicly celebrated, she then wrote to him, subscribing herself as being his affectionate wife ; and it appears from the examination which I now have in my hand, that, from some of the letters in which she so subscribed herself, he had taken the pains to withdraw the subscription ‘ your affectionate wife ;’ and let it be recollected, now that it occurs to me to mention it, that, from the beginning to the end, the evidence seems to me to make it out most clearly that this person (in whatever character as to the present or the future he held himself out to her) meant to deceive and delude her mind,—now and then, however, slipping out something, (for the most cautious man may fall into a mistake of that kind) ;—for it is quite evident that he meant there should be no sufficient evidence of a marriage, or even of a promise of marriage, that should be binding upon him ; and that accounts very much for the manner in which he has written two hundred letters. It is in evidence that two hundred letters were written ; those which he received were carefully put up, so that nobody should see them, and a person taking that care of the letters written to him would not be very likely to write letters promptly and plainly avowing the situation of these parties. But, my Lords, he says he received at the same time—that is, in the year 1808—from the pursuer an acknowledgment of marriage. The words ‘ acknowledgment of marriage’ may certainly be taken in two senses—either acknowledgment that a marriage had actually been made, or acknowledgment that there was a promise of marriage ; and you must put a construction upon that, taking it together with that which can be stated to be evidence how the facts stood the one way or the other. This he states he destroyed at that time, or soon after. When I say it is to be taken the one way or the other, as the facts may enable us to decide, let it be remembered that it ought to be taken most strongly against him, if the paper which he gave to her will bear the construction that there was an acknowledgment of actual marriage. Your Lordships see, therefore, with respect to the paper the girl handed over to him, he took care immediately to destroy it. You will see by and by how he reasons with respect to the paper which he gave to her ; but, before I come to that part of the case, give me leave to state what he says in his defences. He says in his defences, that he never paid his addresses to the pursuer by way of marriage. ‘ It is stated,’ he says, ‘ in the summons, that the defender paid his addresses to the pursuer with the view of marriage, and that she consented thereto, and that the parties accepted each other as husband and wife. There is no foundation for this allegation ; the defender never paid his addresses to the pursuer with the view of marriage.’ Now, if the defender gave this acknowledgment and declaration,—whether it is an acknowledgment and declaration of present mar-

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riage, or acknowledgment and declaration of future marriage,—it is at least an acknowledgment and declaration that was to lead her to think that he did pay his addresses to her with a view of marriage. But taking him to speak that which is the truth, if he did not pay his addresses to her with a view of marriage, with what view, I would ask, did he pay his addresses to her? That he did pay his addresses to her, and did pay his addresses with a warmth and affection of language that has hardly ever been paralleled, nobody can dispute. Had he no object in paying his addresses to her? If he says his object was not marrying when he paid his addresses to her, and if he did in point of fact pay his addresses to her, what conclusion are we to come to from the evidence with respect to his intent, but that very view with which these interlocutors appealed from have fixed him?

My Lords, if you look to the circumstances under which the girl received this paper, you will see that it appears she had at that time recovered from an indisposition, and that he states himself to be much obliged by the confidence she had reposed in him, and that it should be his constant study and care to do everything in his power to make her happy; and then he says:—‘On the other side I send you a copy of what I intend to write you, to see if it meet your approbation. You will observe I have added to it a clause, by which both parties are bound not to show it, nor tell it, without the consent of the other, to which I hope you have no objection.’ Then the copy is in ipsissimis verbis the same with that engagement I have read. He gets in return from her a declaration which is called a contract of marriage, and which, according to his own account, he takes care immediately to destroy.

Then, when he comes to make his judicial declaration, let us see what he says he meant by delivering to her this acknowledgment and declaration from himself. When interrogated whether he ever said to the respondent that he considered her as his wife? he says, ‘He may have done so in jest, but never said so to her seriously;’ and the writing which I have before read to your Lordships being shown to him, he said, ‘That writing is mine, excepting the date, and I gave it to her, but, as I think, not upon the 1st of October; the date, I think, has been put to this writing afterwards, and is not the right date. I did not conceive it to be binding, as it was neither addressed nor dated.’ So that, upon that occasion, this gentleman receives a declaration from her, which she certainly meant to have some operation, either as an acknowledgment of marriage, or as a promise that there should be a future marriage. With a view to withdraw that evidence from the observation of human eyes, he destroys it; and with respect to that which he penned himself, as that which she is to rely upon, he takes care it shall be addressed to nobody, and that it shall not be dated; and therefore he places in her hands that which she was to think was an available instrument for either then creating, or in future creating the relation of husband and wife, but neither addressing it nor dating it; and he then says, ‘As it was not addressed nor dated, I thought it would not be obligatory at all, nor of any use at all, no more than if I had never put it in her hands at all.’

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My Lords, under these circumstances—putting now out of the question the relation of husband and wife—saying, however, that I confess I go a good way, if not the full length, with some of the learned Judges who consider this a promise de presenti,—but thinking it not necessary in this case to determine whether it is a promise de presenti or not, and coming to a conclusion which is inevitable upon this evidence, that if there was a promise of a future marriage, there has been that copula which, according to the law of Scotland, will constitute a perfect marriage. In expressing that opinion, we are to consider how the persons came together, and for what purpose he came together with her. That he paid his addresses to her, anybody who looks at these love-letters which I hold in my hand will find to be clearly made out. I believe there were two or three hundred of them. It might be very useful, perhaps, if this House were attended by ladies, to distribute them among them, that they might be put upon their guard against such insinuating addresses made to them. They might have been of some use perhaps last night.\* He pays his addresses to her, giving her a paper which she was to look upon as an engagement to marry; but he says he made no promise to marry her at all. Then, in God's name, for what purpose did he make his addresses to her for six, seven, or eight years? Your Lordships find him meeting her in all secret places—taking her to plantations—(indeed the only answer that has been made to that is, that a plantation in Scotland is a thing that will hardly cover concubitus)—taking her to groves—taking her to empty houses—staying with her all night in empty houses—taking her into a laundry where there is a bed—he going to bed at night—she, as he admits, sitting on the bed all night. And your Lordships will find in the different letters that are printed, repeated statements that he had been with her all night—repeated applications that she might be with him all night; and yet this gentleman is supposed, under these circumstances, to be so virtuous and so Platonic a lover, as to express in his letters that he had passed with her the most transporting night he had ever passed with her in his life, while we are called upon to believe that nothing in the world had passed but the interesting conversation of this young woman with a man who never meant to marry her. I should like, by the way, to intimate to my excellent friend Dr. Lushington, that he should put into the book called *De Matrimonio* this case, by way of exception to all his doctrines; for he states, that if you have the tempus, the locus, and the kissing, and all those sort of things, you must therefore presume that there was sexual intercourse. Now, it seems a man may go on for eight years promising, though he does not mean to marry the woman—paying his addresses to her in the warmest possible language—stating himself that he would be her husband—making her believe that she was to be his wife—stating

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\* Several ladies had been in the House the preceding evening, at the debate upon a motion by Earl Grey.

that he is her husband—stating that she is his wife—meeting her—sitting up with her all night—(not, indeed, sitting up with her all night, but, according to his own acknowledgment, he lying in bed, and she sitting on the side of the bed by him)—and this in houses where there were no persons but themselves, except in the instances spoken to by a lady of the name of Forrester, and the other of the name of Leys;—and then Mr. Wetherell says—and that is really the only thing that he can say in a case of this sort, and there is no case in which he cannot say as much as anybody, and as ably—every thing he can say about that is, that he does not believe this lady.

My Lords, you must take all the evidence together in such a case as this. You must look at the purposes for which they came together, according to the man's own acknowledgment. You must take the whole history of the transactions during the eight years; and if Mrs. Forrester and Mrs. Leys speak to that, which I protest I think no man could doubt to have taken place, if there had been no such evidence, the transactions connected with their evidence give a credibility to the testimony; whilst, at the same time, their testimony introduces the considerations that are to be drawn from all the rest of the evidence, in such a manner that I think no man living can doubt that there must have been in this case a copula.

My Lords, it has been stated by Mr. Moncreiff, in a very able argument, that it is as well known in Scotland as possible what makes a marriage. I really think, however, there ought to be a sort of proclamation stuck up somewhere when an Englishman goes into Scotland. In all probability, this girl did not know that a copula would make a marriage. If she had so much knowledge of the law of Scotland;—if her head was full of all that learning which is to be found in Morison's Dictionary, page—I do not know how many hundreds or how many thousands;—if she meant to be his wife, and he was constantly telling her she should be his wife, it was the most likely thing in the world that it should take place—that the promise should be carried into effect. How it could be supposed that he would all this time resist the charms of this person, who was, according to him, the most charming individual who ever walked upon the face of the earth, it is exceedingly difficult for an Englishman to conceive. Whether in Scotland there is or is not that frigidity which Mr. Wetherell supposed to exist, when he could not be induced to believe whether or not there was a consummation of this business, I do not pretend to say; but I am sure that if your Lordships were not to pronounce in this case that there has been sexual intercourse, you ought immediately to undo, by act of Parliament, all the divorce bills you have passed, (for I protest I think this case the strongest case I have met with,) and to take care never to pass another in future.

My Lords, the nature of the defence, and the whole conduct of the defender taken together, are such, that as the Courts below—the Consistory Court in the first instance, and the Court of Session in the second—have given expenses, though I do not look to their example as affording

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May 14. 1823. a rule on which we should proceed, because I observe they give expenses more regularly and uniformly than we do, yet I do think this is a case in which this man's wife—for such I take her to be—should be at no expense whatever; and therefore I am of opinion she should have the largest which the standing orders of this House will allow. Upon the whole I am of opinion that the judgments should be affirmed, the respondent having her costs and expenses as far as the standing orders of this House will permit, or so much out of the sum which the standing orders of the House will allow, as will be sufficient to pay all her expenses; and unless any of your Lordships happen to differ from me in the conclusions I have come to, I shall move that that be the judgment of the House.

*Appellant's Authorities.*—(1.)—1. Stair, 4. 26; 1. Ersk. 6. 3; Cameron, June 29. 1756, (12680); Johnstone, Nov. 18. 1766, (12681); M'Innes, Dec. 20. 1781, (12683); Hepburn, Nov. 18. 1785, (12686); Taylor, Feb. 16. 1786, (12687); M'Lauchlan, Dec. 6. 1796, (12693); Edmonston, May 15. 1804, (App. Proof, No. 1.); Macadam, March 4. 1807, (App. Proof, No. 5.)

*Respondent's Authorities.*—1. Ersk. 6. 2. and 5; 3. Ersk. 2. 22; Gordon v. Dalrymple, (Dodson's Report.)

C. BERRY,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 12.*)

No. 59. ANDREW GORDON, Appellant.—*Jeffrey—More.*

A. BOGLE, for the ROYAL BANK of SCOTLAND, Respondent.

*Property—Statute 57. Geo. III. c. 53.*—Held, ex parte, (reversing the judgment of the Court of Session,) that it is competent for the Dean of Guild of Edinburgh, under the above statute, to authorize proprietors of piazzas in Edinburgh to build them up.

June 4. 1823.

2D DIVISION.  
Lord Reston.

THE appellant Mr. Gordon was proprietor of a shop and cellar on the south side of the High street of Edinburgh, immediately to the west of the Royal Bank close. In front of the shop, and along the whole extent of the building, there was a piazza, with an area between the door of the shop and the foot pavement of the street. The property was thus described in the title-deeds:—‘ All and whole these two laigh booths, &c. upon  
‘ the south side of the High street, a little above the Cross, upon  
‘ the west side of the close formerly called the Master of Works  
‘ close, now the west entry to the Royal Bank close, bounded  
‘ between the lands sometime of Andrew Cooper of Fenton Barns;  
‘ on the south; the lands sometime of Mr. John Adamson, advocate, upon the west; the said close, of old called the Master of  
‘ Works close, upon the east; and the High street of Edinburgh  
‘ upon the north parts.’