

adultery, because she lived in London, where it took place; as a person in this great city moves in a state of comparative obscurity as to his actions, to what a person does, who lives in a less populous place, where his life is open to continual observation: *Magna urbs magna solitudo*. There is nothing in the facts charged to shew that Lady Kirkwall's suspicion must, of necessity, have been excited, or that the adultery might not have taken place without her knowledge: but supposing that she was acquainted with it, though a husband is bound to take prompt notice of the infidelity of his wife, and is liable to have his neglect of so doing urged against him, when afterwards seeking his legal remedy; yet this doctrine is not to be pressed against a wife, unless in very particular cases.

Even in the case of a husband it is not invariably expected that he should shew the time when the charge first came to his knowledge. It might be prudent and expedient for the success of his suit that he should do so, but it is not absolutely necessary—something must be allowed to convenience. Certainly a wife would not be justified in living in the same house with her husband's concubine, sharing the turpitude of his crime, and partaking of a polluted bed; but she might have a reasonable hope of his return to her society; and forbearance under this *spes recuperandi* has never yet been held to constitute a bar to her legal remedy, when every hope of that kind should be extinct. I therefore admit this libel to proof.

On the 13th of February, 1818, the libel being fully proved, the Court pronounced that Lady Kirkwall was entitled to a divorce, and decreed accordingly.

[280] **LORD HAWKE v. CORRI, CALLING HERSELF LADY HAWKE.** 23rd June, 1819; 16th May, 1820—Jactitation of marriage. Factum of marriage pleaded but not sustained in proof. Effect of imposition of such celebration, if actually practised, *quære*. The Court ultimately declined to pronounce for jactitation; it appearing to have been done originally with the permission of the party.

[Discussed and followed, *Thompson v. Rourke*, [1893] P. 71. Discussed, *Cowley v. Cowley*, [1900] P. 313: affirmed, [1901] A. C. 450.]

This was a suit of jactitation of marriage, brought by Lord Hawke against Augusta Corri, calling herself Lady Hawke.

On the part of Lady Hawke an allegation was offered in contradiction to the libel, pleading the circumstances of an ostensible factum of marriage, had under a special licence obtained, or pretended to be obtained, by Lord Hawke.

Dr. Swabey and Dr. Daubeny contended that the allegation did not plead a factum of marriage as a real and valid marriage, and that such a plea could not be received as a defence in any other form; that no licence, or record of any, was exhibited; that it only averred "that Lord Hawke declared that he had obtained a licence, and that he produced an instrument which he said was a licence."

On the other side, Dr. Jenner and Dr. Lushington submitted that if the allegation had pleaded a fact of marriage even less strongly, it was sufficient to shift the proof of validity on the other party; that the averments were sufficient to put Lord Hawke on a proof of nullity of marriage; and if that could effectually be established, their party would be still entitled to the benefit of the facts pleaded, to repel the charge of false and malicious jactitation.

[281] *Judgment*—*Sir William Scott*. This is a proceeding not very usually adopted of late years; but it has, nevertheless, I presume, a legal existence. It is brought by Edward Lord Harvey Hawke against Augusta Elizabeth Corri, calling herself Lady Hawke, for jactitation of marriage. The libel states in the first article "that Lord Hawke is in no way married to or united with this lady" (meaning, as the Court presumes, neither in fact nor in law); "that she has falsely and maliciously boasted and reported that she is married to him, whereas, in fact, no marriage has taken place; and that on her being desired to desist from such conduct she paid no attention, but continued, falsely and maliciously, to boast and report such fact to the no small prejudice and injury of the complainant." The libel goes on to pray "that the Court will pronounce that she has been in no manner married to the complainant; that it will restrain her from such conduct and condemn her in the costs of the suit." The proceeding is therefore in the nature of a criminal suit. To this libel an allegation has been given in, which is strictly defensive; and the Court is always inclined to allow great latitude to defensive pleading, unless it clearly appears that the admission of the matter can lead to no useful result, which certainly does not appear to be the case here.

The allegation pleads "that in the months of January, February, and March, 1814, Lord Hawke, being a widower, paid his addresses to Augusta Elizabeth Corri, who was then a single woman, that he made proposals of marriage to her which were accepted; that she accompanied him several times to his proctor in Doc-[282]-tor's Commons, for the purpose of procuring a special licence for their marriage, and particularly on the 19th of March, 1814, she went with him, and that she remained in the carriage while he went into the proctor's office for the express purpose, as he declared to her, of obtaining such licence; that on his return he informed her that the licence would be sent to him in the evening of that day, and they accordingly agreed that the marriage should be solemnized on that same evening at No. 22 Park Lane, a house which Lord Hawke had purchased for their future residence; that the marriage was accordingly solemnized pursuant to the rites and ceremonies of the Church of England by a priest or minister in holy orders of the Church of England, or by a person whom Lord Hawke introduced as such; that on this occasion his lordship produced a written instrument which he stated was the special licence; that the marriage by the request of Lord Hawke was kept a secret for some months, but afterwards publicly avowed; that they cohabited together at the family mansion of Lord Hawke in Yorkshire, as also at Paris, Worthing, and other places, until the month of March, 1818, during which time a correspondence occasionally took place between them, in which he uniformly directed to her as Lady Hawke," which letters are exhibited, and are couched in a very strong style of conjugal affection, he signing himself her affectionate husband, &c., "and that he directed his children by his former wife to address her as their mother."

Now supposing this allegation to be true (which the Court is for the present bound to suppose), nothing can be clearer than that Lord [283] Hawke has publicly and privately declared himself to be her husband. The Court entirely agrees with what has been said, that the defence might be sustained without a specific description of the fact of marriage, it is sufficient for a *prima facie* defence to allege that a fact of marriage actually passed; and the burthen of proof is unquestionably shifted on the other party to shew that any thing has occurred to invalidate it, especially as he has been, as she alleges, the party conducting the whole business throughout, and is alone in possession of the means of proof.

Looking at these facts, it is impossible for me not to say that there is abundant *prima facie* allegation of the fact which, in the present stage of the proceedings, is all that is necessary. How the case may be in a moral point of view if it should prove that the person who solemnized the marriage was not a clergyman and the paper not a licence, to the knowledge of the party who held them out as such to a person totally ignorant of the facts, no reasonable man can doubt. What it may be in legal consideration it is not necessary for me to answer at present; but I am not quite prepared to say that a marriage contracted under such circumstances would necessarily be pronounced null and void. If the case should arise, which the plea suggests, it would present a question worthy of the best consideration that could be given to it for the protection of the party abused by such treatment. No case has been cited to me in which it has been proved or has been laid down that an innocent woman so imposed upon would not be entitled to the complete protection of the law. A Court, I think, would strain hard to allow her the full benefit of it if she was really the dupe of so cruel an act of imposition.

[284] A responsive allegation was afterwards given by Lord Hawke, pleading the marriage of the defendant with Anthony Philip Corri; that she was at that time his lawful wife, that in 1814 she came to cohabit with him, the said Lord Harvey Hawke, and lived with him as his mistress; that he then allowed her to assume his name. It further pleaded a deed of settlement upon her, on their separation, in the name of Corri, and reciting her to be the wife of the said Anthony Philip Corri.

In objection to this allegation, Dr. Jenner and Dr. Lushington submitted that this was an abandonment of the whole case, as it set forth his own profligacy, and that as Lord Hawke had permitted her to use his name there was no ground for the suit of jactitation.

Dr. Swabey and Dr. Daubeny submitted that cohabitation was no bar to such a suit; that a suit of jactitation was the only remedy by which the party could protect himself and his family from such an assumption of a false relation to himself and to them; that it thus becomes in its consequences a marriage cause, in which it was

necessary to establish what was the real condition of the woman ; that this sufficiently appeared from the contents of the allegation, and it was entitled to be admitted and to be considered with the other facts of the case in the final decision of the Court.

16th May, 1820.—*Judgment*—*Sir William Scott*. This is a proceeding in a cause of jactitation of marriage brought by Lord Hawke against a female who, as he represents, had usurped the title and character of his wife—a proceeding not now very familiar to this Court, [285] but which it is bound to receive for the protection of persons against the extreme inconvenience of unjust claims and pretensions to a marriage which has no existence whatever. If a person pretends such a marriage, and proclaims it to others, the law considers it as a malicious act, subjecting the party against whom it is set up to various disadvantages of fortune and reputation, and imposing upon the public (which for many reasons is interested in knowing the real state and condition of the individuals who compose it) an untrue character ; interfering in many possible consequences with the good order of society, as well as the rights of those who are entitled to its protection. It is therefore a fit subject of legal redress ; and this redress is to be obtained by charging the supposed offender with having falsely and maliciously boasted of a matrimonial connexion, and upon proof of the fact obtaining a sentence enjoining him or her to abstain in future from such false and injurious representations, and punishing the past offence by a condemnation in the costs of the proceeding.

To a charge of jactitation three different defences may be opposed. It is obvious that the fact of having made any such representations may be denied, in which case, if not proved, the accusation shares the common fate of other unfounded charges ; or, secondly, it may be admitted that such representations have been made, but that they are true ; for that a marriage had actually passed, and in such a way as to give the party a right to claim the benefit of it. In that state of things the proceeding assumes another shape, that of a suit of nullity, and of restitution of conjugal rights, on an inquiry into the fact and [286] validity of such asserted marriage ; and it will depend upon the result of that inquiry whether the party has falsely pretended, or truly asserted such a marriage. In the former case the Court would pronounce a sentence of nullity and enjoin silence in future. In the latter the Court would enjoin the accuser to return to matrimonial cohabitation, unless it could be shewn that some other reason was interposed to dissolve that obligation. A third defence of more rare occurrence is that, though no marriage has passed, yet the pretension was fully authorized by the complainant, and, therefore, though the representation is false, yet it is not malicious, and cannot be complained of as such by the party who has denounced it.

As far as I yet see of the present case it is compounded of the two latter descriptions ; for in one part of this female's defensive plea a marriage is set up, in the other part her defence is rested upon the authority given by Lord Hawke, and not only given, but also liberally used by the nobleman himself, and upon various occasions ; where, to speak of it in the gentlest terms, it could hardly have been expected. Before the Court proceeds farther in this business, which appears in such a questionable character, it has a right to know precisely whether both these defences are sustained, or whether that of an actual marriage is entirely withdrawn, because the course of the Court will be materially varied by the answer to that question. If it is intended that this marriage, as stated in the plea, shall be adhered to (and if it be not, one hardly sees for what reason it found its way here), then the Court is bound to inquire into [287] the fact of its validity. If abandoned, then the attention of the Court is confined to the other plea, that of an authority given to claim the title of wife, though never married.

The description given of the marriage certainly insinuates something of a doubt respecting its canonical regularity, for it in some degree appears to authorize a suspicion that the licence was a forged instrument, and the officiating minister a mere pretender to holy orders. At the same time, there being no such admission, the marriage may be perfectly unexceptionable, performed by virtue of an authentic licence and by a clergyman regularly ordained. Lord Hawke does not advert at all to any such fact of marriage ; but he asserts that she was a married woman with a husband living during his cohabitation with her, and taking that to be an undisputed fact, there is an end of any legal consequence belonging to this marriage, if it did pass in what manner it might

But it is not an undisputed fact, for she asserts that at the time it took place she was a single, unmarried woman. What the real state of the case in that respect is remains to be shewn. If it is as contended, all that the Court has to observe upon it at present is that if any such prior marriage was existing, this act, if it passed, was a most unaccountable act of profanation in which the parties, for no reason whatever, being adjured in the name of the Supreme Being, and in the most solemn style in which an oath can be conceived, to declare whether either of them knew of any impediment to their marriage, take upon themselves to declare that there was none, though both perfectly well knew that there was an impe[288]-diment perfectly insuperable. If that were the real case the Court would be disinclined to stir a finger to relieve either party, both sticking deep in eodem luto. But if the facts were simply these, that, being a young unmarried woman, she was imposed upon by a pretended clergyman and a supposititious licence, the matter might perhaps be deemed an arguable point, whether a marriage, had under such an atrocious imposition practised upon her, might not bind the guilty artificer of such fraud.

It seems to be a generally accredited opinion that, if a marriage is had by the ministration of a person in the Church who is ostensibly in holy orders, and is not known or suspected by the parties to be otherwise, such marriage shall be supported. Parties who come to be married are not expected to ask for a sight of the minister's letters of orders, and if they saw them could not be expected to inquire into their authenticity. The same favourable principle might not be unjustly applied on behalf of an innocent young woman to this ostensible minister, though officiating in a private house, when the office is authorized by the special licence, to be performed with just the same validity as in a church. And even if this special licence were false, it might perhaps be considered by some as likewise an arguable point, whether the same principle which, in favour of innocent parties, supports the act of a pretended clergyman, might not be invoked to uphold the authority of a supposititious instrument of licences, obtruded upon a party, and deceived by so cruel a fraud; for it can as little be expected that a young woman should ascertain the authenticity of the instrument [289] under which her marriage is to pass as the ordination of the minister who is to perform it. Upon such points I give no further opinion than by saying that the Court would listen, without impatience, to any argument (whether successful or not) which had for its object to protect an innocent young woman against the effect of so detestable a fraud.

I am to remember that this is her own representation still standing upon her own allegation. Am I then to understand that this marriage, so remaining still in plea, is, upon this or any other ground, abandoned? The argument, in the direction of it, appeared to imply the contrary; for it was contended, and most justly, that wherever a marriage was set up in a cause of this nature, the Court was bound to proceed in its inquiry and could not dismiss the suit. But how do any such duties arise if the title of marriage is totally waived? If that is withdrawn from the plea the party cannot in the same breath call upon the Court to inquire into a fact which is disclaimed, and try a question in which no real interest remaining is set up.*

That matter being disposed of, the question then is reduced to the other ground, of an authority given by Lord Hawke to the defendant to use his name during an illicit connection between them, which lasted some years; and the fact is not only admitted by Lord Hawke, but avowed and asserted in his own plea that he did so; and there is rea-[290]-son in abundance to conclude, from documents produced, that the liberty was not only given, but that he himself clothed her with that character in all places and all situations—in England and abroad—in London and at his country residences—amongst his tradesmen, his neighbours, and his friends—in his intercourses of private life, and to the representatives of foreign governments, where it was necessary to give her a true description to entitle her to a privileged reception in the countries they represented. What is more appalling still, he introduces her to his own children by his deceased lady, as succeeding to her rights and duties, in the care and management of her unprotected offspring. I am not speaking here of the moral merits or demerits of such facts. No language of mine could be more forcible than the language of the facts themselves. I am concerned only with their legal quality; and I am bound to say of that, that it certainly deprives him of a right to complain

* Here it was tacitly intimated that that part of the plea was waived.

of an injury which, if it exist at all, he has inflicted upon himself; and this not in a moment of indiscretion at once lamented and withdrawn, but publicly and privately, in habit and for years, without intermission, and in situations where very powerful calls of both duty and decorum might have been expected to impose a restraint. It is difficult to maintain that she is liable to a charge of malice for following his own authorized precedents for adopting the character he had conferred upon her—for echoing his own assertions—and conforming to his own course of acting.

It seems to be a representation, rather insinuated than avowed, that the permission was given only [291] during the cohabitation, and, that this having ceased, the permission is expired. This may be true, but it does not follow that it is any part of the duty of the Ecclesiastical Court to proclaim its extinction; that Court is bound, in a cause of jactitation, to see that parties do not usurp the characters of husband and wife (characters sacred and indissoluble) to the injury of the complainant; but if there be no usurpation, if the title has been so licenced by the authority, and still more by the example of the complainant himself, this Court will leave him to relieve himself, by his own exertions, from the inconvenience of his own acts.

It is too much to expect that, if a person imposes false characters of this nature upon the world, the Ecclesiastical Court is to interpose in his behalf, as soon as the consequences of such unfortunate conduct begin to assail him. It looks in vain to find malicious boasting in language long authorized, and used by the party himself. Persons of such habits have their quarrels and reconciliations. They likewise change these transient connections, and the new favourite is privileged with the title of her predecessor. This Court cannot follow them in these variations of humour and conduct, and drop all recollection of the false character they have conferred at the moment they think proper to drop it in practice. According to Lord Hawke's own account, he has been living for years in an adulterous connection with the wife of another man, whom, for the conveniences of that connection, he has every where introduced and qualified as his own. What protection he may find in other Courts from the molestation of claims [292] originating from this imposture, which he has practised upon the world, is not for me to inquire. He must fight through the difficulties he has created; and in every case he will have the protection to which he is legally entitled. But this Court cannot indulge him with a general exemption from all possible inconvenience by pronouncing a sentence of malicious jactitation against the person whom he himself has tutored to use the language of which he complains. Suit dismissed.

PROCTOR v. PROCTOR. 16th July, 1819.—Divorce, by reason of adultery, barred by the *compensatio criminis*, committed even after the adultery of the defendant. Recrimination sustained.

[Referred to, *Drummond v. Drummond*, 1861, 30 L. J. P. 177; 7 Jur. (N. S.) 762; 4 L. T. 416; *Otway v. Otway*, 1888, 13 P. D. 148; *Symons v. Symons*, [1897] P. 173; *Constantinidi v. Constantinidi*, [1903] P. 258; *Evans v. Evans*, [1906] P. 128; *Brooking-Phillips v. Brooking-Phillips*, [1913] P. 87.]

This was a case of divorce, by reason of adultery, brought by the husband against the wife, in which the principle of recrimination was fully discussed, and with reference to acts of the husband subsequent to the commencement of the suit.

The case was argued by Dr. Swabey and Dr. Lushington for the husband; by Dr. Arnold and Dr. Jenner for the wife.

Judgment—*Sir William Scott*. This is a suit for a divorce, by reason of adultery, instituted by Charles Proctor, Esq., against Elizabeth Mary Proctor, his wife. The libel states "the marriage of the parties to have taken place on the 13th of September, 1810, and their cohabitation together from that time until the month of August, 1814, when they left London for the purpose of making a tour on the Continent; that they proceeded on their route, and reached Naples in January, 1815, where they [293] remained some time, and during their residence there became acquainted with a Mr. French, an Irish gentleman, with whom they formed an intimate connexion. Mr. French being also on an excursion of pleasure, and having ascertained the destination of Mr. and Mrs. Proctor, proposed to accompany them, which was agreed to, and they shortly afterwards left Naples together, and continued so until they reached Brussels. During this time the intimacy between Mr. French and Mrs. Proctor increased, and several acts coming to the knowledge of Mr. Proctor's valet, which