

Elizabeth McNaughton, Mrs. Alexander Kennedy (Kilhenzie)

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Declarator of Marriage, Elizabeth McNaughton relict of Alexander Kennedy, brother to John Kennedy of Kilhenzie

v.

William Clugston, surgeon apothecary in Stranraer

dated 1745

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1745 Inventory of Process of Declarator of Marriage Elizabeth McNaughton v William Clugston

16 Jan 1858 transmitted to General Register House Edinburgh

Inventory of Process of declarator of marriage

Elizabeth McNaughton relict of the deceased Alexander Kennedy, brother german to Mr John Kennedy of Killhenzie, Advocate, now spouse to Mr William Clugston surgeon apothecary in Stranraer

against

the said William Clugston

1. summons dated 21 Jan 1745
2. execution thereof
3. mandate by defender
4. defences
5. answers

3. Mandate Stranraer March 18th 1745

to Mr Robert Wallace Writer in Edinburgh

appointing him counsel to William Clugston in declaration process

[testimonial of the Pursuer]

That the said William Clugston having con[cerned?] a matrimonial love and affection for the said Elizabeth McNaughton came to **her house at Portpatrick** on the eleventh day of May last or one or other of the days of that month or the preceding month of Aprile and made his addresses to her for marriage and the next day in the forenoon having in company with Mr William Maxwell of Ardwell Justice of the Peace in the shire of Wigtoun came again to her and renewed his addresses to her to the effect reserved to the more serious and vollicitous manner and she to prove his seriousness telling him that he would soon ? he answered that

he said he had often hear of her and she of him

she had a family of children

he answered that he would do the best he could for them

and she telling him further **she had taken care of her family there severall years and was in debt**

he answered that he would pay it all

that I will take you from a publick house which I think a Hellish life to one in your station

... and accordingly the said William Clugston and she stood up and joyned hands together before the said Justice of the Peace and others present administered to them the conjugal consent and thereafter they owned and acknowledged themselves married persons husband and wife

4 defences

There nothing having happened betwixt her and the defender on the eleventh of May last (which was the Saturday before celebrating the sacrament at Portpatrick where the pursuer lives and keeps a change) other than that Sir William Maxwell of Munswelk? William Maxwell of Ardwel and others who had come to Portpatrick that day took the defender who was quartered in another house to the pursuers and having drunk pretty likely a frolic came to their heads [to marry] the next day the JP pretended to officiate was looked upon by all others as a jest .. but which never turned into earnest by the parties bedding together on the contrary the defender went off with the rest of the company having been only at Portpatrick on his relieve from Ireland and soon thereafter made his addresses of courtship to a young lady in the neighbourhood within three or four miles of Portpatrick and about the middle of October was solemnly married by the minister of Stoneykirk [?] the parish where she resided and they have cohabite together ever since as man and wife.

the pursuer all this while laying no claim to him as her husband **but retained the name of her deceast husband as formerly** but since she has been pleased to give the defender this piece of trouble to squeeze from him no doubt a piece of money to drop the process the following defences are offered.

...4th as the pursuer never claimed the defender as her husband thereafter nor past herself for his wife but **went under the name of Mrs Kennedy** as before

5th the [new]young lady is Ardwel's near relation his grandfather old Sir William Maxwell and her grandmother being brother and sister

5. Answers

These long defences may be reduced to this, that the defender owns he was married to the pursuer but that his marriage is not to subsist, why? because Mr Clugston the defender intended only in Jest.

Of little import was it that the ceremony was only performed by a Justice of the Peace and not by a minister, the use of either the one or the other is only for the greater solemnity and to take either of them is sufficient.

It is not true that the pursuer's acquaintance with the defender only commenced the night before they were married, the contrary will be proved.

It is not true that ever the pursuer gave into jocular marriages

It is of no import that the parties did not bed

The law says consensus non concubitus facit matrimonium and the occasion of their not bedding was that the defender went soon to bed that night and the pursuer having a good many strangers in her house was obliged to attend them late and therefore did not think proper to disturb the defender that night and he went of next morning earlie

Of as little moment to the present question is the defender's having married another woman, it is a misfortune to the girl, but it is is a misfortune that she had some hand in herself