

1813.

ALEXANDER M'ADAM, Esq., Apparent Heir
of Tailzie and Provision to QUINTIN
M'ADAM, Esq. of Craigengillan, } *Appellant ;*

ELIZABETH WALKER, designing herself Wi-
dow of the said QUINTIN M'ADAM, and
her Children, and SIR WILLIAM CUNYNG-
HAME, Bart., and Others, Tutors and
Curators to the said Children, } *Respondents.*

M'ADAM
v.
WALKER, &c.

House of Lords, 24th March 1813.

RECALL OF SEQUESTRATION.—Circumstances in which a sequestration of real estate was recalled, for which there had been a competition.

John M'Adam executed a strict entail of his estate of Craigengillan in favour of his own children ; whom failing, upon the appellant, his nephew.

It was alleged by the appellant, that Quintin M'Adam, the only son of John, succeeded in 1789, and made up titles under the entail, and, in virtue thereof, possessed the estate until the 22d^o March 1802, when he put an end to his own existence, by discharging a pistol into his mouth.

The appellant further alleged that he was never married, but that he had natural children, by different country girls, and two of these children were resident in his mansion house of Barbeth, with their mother, at the time of his death. That this lady, Elizabeth Walker, insisted upon keeping possession, upon the pretence that Mr. M'Adam, on the very day when he shot himself, and within an hour or two of his committing the act, had made a declaration, in presence of some of his servants, that he was married to Elizabeth Walker, whereby, it was said, her children were legitimated.

In these circumstances, the appellant, who was the nominatim heir apparent of tailzie, proceeded to assume possession in that character ; but being opposed by Elizabeth Walker, he presented a petition to the Sheriff of the county in which the mansion house was, praying for instant delivery of the keys of the charter chest, and other repositories, and to decern them to lodge the same in the hands of the clerk of Court, and praying to decern Mrs. Walker to remove from the mansion house. The Sheriff allowed inventories to be taken. Of this judgment the tutors brought an advoca- tion, and the Court found (8th June) neither party entitled

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to the possession of the entailed estates or the title deeds. The appellant also brought an advocacy, but it was refused, of same date.

July 1805.

In the meantime, a competition of brieves was going on before the Macers, between the appellant and Catherine M'Adam, eldest daughter of the said Quintin M'Adam. In these brieves the Lords sisted proceedings "till a decret of declarator is produced, ascertaining the legitimacy or illegitimacy of the claimant, Catherine M'Adam."

July 11, —

The appellant then applied by petition to the Court of Session to sequestrate the estate, and this interlocutor was pronounced: "The Lords having advised this petition, they sequestrate the whole entailed estate of Craigengillan, and appoint Mr. Crawford Tait, writer to the Signet, to be judicial factor thereon, with the usual powers, he finding caution before extract."

The declarator of marriage and legitimacy was proceeding in the Court, and, on 16th April 1806, was decided in favour of Elizabeth Walker, in the Commissary Court, and on 13th Nov. 1806 and 4th March 1807, in the Court of Session.

Mar. 11, 1807

Mrs. Elizabeth Walker had given birth to a son after the death of Mr. M'Adam, and tutors and curators having been appointed to the son (Quintin), a petition was presented to the Court to recall the sequestration of the entailed estate, and to find that the tutors and curators for Quintin M'Adam are entitled to possession of the same. After answers were lodged to this petition, the Court pronounced this interlocutor: "Recall the sequestration of the entailed estate of Craigengillan and appointment of the judicial factor thereon, and find the petitioners, as tutors for Quintin M'Adam, are entitled to possession."

Against this interlocutor the present appeal was brought, chiefly grounded on the allegation that it was premature, pending an appeal to the House of Lords, to recall the sequestration, and to find the respondents entitled to possession of the estate. The answer made to this was, that the sequestration was awarded before any evidence of the legitimacy of Mr. M'Adam's children had been led; but now that this evidence had been taken, and had been held to be conclusive in establishing the legitimacy, the Court were entitled to act upon that evidence and upon the whole circumstances.

After hearing counsel, it was

Ordered and adjudged that the interlocutor complained of be, and the same is hereby affirmed.

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For the Appellant, *Henry Erskine, John Clerk.*

For the Respondents, *Sir Sam. Romilly, Ad. Rolland, Geo. Cranstoun, Tho. Thomson.*

M'ADAM
T.
WALKER, &C.

[Dow's Reports* et Mor. App. Proof, No. 3. and 4.]

ALEXANDER M'ADAM, Esq., Apparent Heir of Tailzie and Provision to QUINTIN M'ADAM, Esq. of Craigengillan,	}	<i>Appellant;</i>
ELIZABETH WALKER, designing herself Wi- dow of the said QUINTIN M'ADAM, Esq., and Others,		
	}	<i>Respondents.</i>

House of Lords, 21st May 1813.

MARRIAGE—LEGITIMACY—PROOF—INSANITY.—(1.) Circumstances in which a man made marriage with a person then living with him, and who had born him two children, and who was pregnant with a third, by declaring before witnesses, called in to witness the ceremony, that he “took them to witness that this is his lawful married wife, and the children by her, his lawful children;” and this declaration being assented to on the other part, was held as a lawful marriage. (2.) The gentleman having shot himself a few hours thereafter, the plea of insanity was set up against the marriage, but held this was not proved. (3.) It was contended that a marriage, celebrated in this form, was, like a promise, incapable of being proved by parole evidence alone, without some writing or acknowledged solemnity to support it: Held that parole was competent. (4.) In the proof the appellant offered to prove constitutional tendency to insanity in the deceased's family, by offering evidence as to the insanity of his progenitors, but the Court held it incompetent to prove the insanity of M'Adam by such facts. Affirmed in the House of Lords except as to the fourth point.

By deed of entail, the estate of Craigengillan and others had been destined to Quintin M'Adam and other heirs,

* Some cases in Dow are imperfectly reported. These will be reported here, in order to supply omissions.