

SELECTIONS.

THE BREADALBANE PEERAGE CASE.

The rival claims of Mr. Campbell, of Glenfalloch, and Mr. Campbell of Borland, to the earldom and estate of Breadalbane, have been the subject of litigation in the Scotch courts for two years or more. At last the final judgment has been obtained by the former, who has the advantage of possession, and it will probably determine for ever the succession to an inheritance not less extensive and far more enviable than many a continental principality. The decision just given, though not unanimous, is supported by a very great preponderance of judicial authority. The case had originally come before a single judge Lord Barcuple, who pronounced in favour of "Glenfalloch" as he is called, by a Scotch idiom, throughout these proceedings. Thereupon "Borland" appealed to the first division of the Court of Session, consisting of four judges, who consulted their nine brethren of the Scotch Bench. One of the nine declined on grounds of relationship, to deliver any opinion, but the other eight concurred in affirming the title of Glenfalloch. The judges of the First Division, however, were equally, the Lord President and Lord Deas agreeing with the consulted judges, while Lord Curriehill and Lord Ardmillan recorded their dissent. The result is, that Mr. Campbell, of Glenfalloch, is declared Earl of Breadalbane by a majority of ten Scotch judges against two, and can only be ousted by a solemn reversal of their sentence by the House of Lords.

The late Marquis of Breadalbane, who died in Nov. 1862, left no heir capable of succeeding him in the peerage of Great Britain. The Scotch earldom, however, together with estates supposed to be worth more than 50,000*l*. a-year, devolved on his nearest heir general, and no one seems to have doubted during his lifetime, or until a young lieutenant in the army started up as a competitor, that Glenfalloch stood in this position. Both claimants traced their descent from the same great-grandfather, William Campbell, of Glenfalloch, who died in 1791, and as Glenfalloch's grandfather was the second son of this old gentleman, Borland's grandfather being only the sixth, the fountain-head of dispute was brought within two generations. The whole question turned, in fact, on the legitimacy of Glenfalloch's father, W. J. L. Campbell, and this upon the alleged marriage of his grandfather, James Campbell, second son of William, the common ancestor. It was clearly shown that James Campbell's reputed wife and the grandmother of Glenfalloch, had cohabited with James for three years before the death of her lawful husband, Christopher Ludlow, an apothecary and grocer, of Chipping Sodbury. Their acquaintance began while James Campbell, then a young officer, was quartered in the west of England, and they eloped together in Jan. 1781. In the same year it appears that a marriage ceremony

of some kind took place at Edinburgh, and the parties soon afterwards sailed for America, with James Campbell's regiment, and were received there in society as man and wife, but as Ludlow did not die until 1784. it is not denied that during this period their relation was wholly illicit. Between 1784 and 1792 or 1793 they lived for the most part in England, and their only son, W. J. L. Campbell, was born in 1788, but thenceforward, until 1806, when James Campbell died, their ordinary residence was in Scotland, where the validity of their marriage was taken for granted by every one. Upon these facts it was contended on behalf of Glenfalloch that, according to the principles of Scotch law, a matrimonial consent sufficient to constitute marriage, and to give a retrospective legitimacy to issue previously born, was established by actual cohabitation, as well as by "habit and repute," after the year 1793. It was alleged, and scarcely denied, that James Campbell and the *cidevant* Eliza Ludlow passed everywhere for married persons, not only with world, but with members of their own family, of the Breadalbane family, and even of the Borland family. A power of attorney left by James Campbell, on going to Gibraltar in 1800, described Mrs. Campbell as his wife, and he shortly afterwards issued letters of inhibition against her as his wife; their son, W. J. L. Campbell, was brought up as a legitimate child, and succeeded without challenge to the property of Glenfalloch, on his uncle's death, his cousin, the representative of Borland for the time being, acting as his agent. On the other side, great stress was laid on the circumstances that, when the reputed Mrs. Campbell claimed her pension as an officer's widow in 1807, she referred exclusively to the sham marriage at Edinburgh in 1781, a ceremony worse than invalid, for being solemnised in her real husband's lifetime, it might have rendered her liable to the penalties of bigamy.

Hence it was inferred on behalf of Borland that she was aware of no other marriage contract than one at the same time illusory and criminal, and it was further argued that no mere implication from subsequent conduct could purge this original taint, even after Ludlow's death, so as to convert her from a mistress into a wife.

The material data in this strange case being unquestioned, the court had simply to balance certain legal presumptions against each other. The two dissenting judges took their stand on the illegal and adulterous inception of the connection, and from this point of view, which comes first, so to speak, in order of time, the *onus probandi* seems to rest on those who set up a marriage by repute. Starting from the fact that Mr. and Mrs. Campbell pretended to be man and wife, and were recognized as such by friends and relations, when they were consciously living in a state of concubinage, and were incapable of exchanging that consent which in Scotch law operates as an "irregular" marriage, what date are we to assign for the first manifestations of "matrimonial intention," and why