Gloucestershire, & the Deft. at Droitwich in Worcestershire
a Suit of Nullity of marriage, being commenced in the Ct
of Arches, a Libel was there offerd, stating the Act of Parlt
& the facts abovementiond, as also an Extract from the
Register of the Plts Baptism, & the Certificate of marriage
signed by Jameson; This Libel was debated merely with
respect to the facts, & yet the Judge gave his Opinion
on the Law, which according to the Practice of the
Sp. Ct is always reserved till the facts are proved, on
failure of which it would be unnecessary to go into the
Law; I should therefore hope you will direct the Deftts
Council to confine themselves to object to the Facts.

Dr Calvert... I must beg leave to insist, the Practice allows one to
object either to the formal or the Legal Part; if any
Doubt arises on the Law, why should the Parties be
put to the Expence of proving the facts which if estab-
=lishd will be of no Importance?

Judge Gould This resembles a Declaration in Demurrer, where the
fact is confessd, but is alledged to be immaterial;
the mode of proceeding, contended for, by Dr Harris is
more solemn, but not necessary

Baron Perrot Natural Justice points out, that if a Party makes a
Complaint, which on the face of the fact alledged, appears
rugatory, the Deft. ought not to be harrassd, but
immediately dismissd; Can you determine whether the
Judge did right or wrong, before you go into the
Law to learn whether the facts can be material; I
think the Council should argue the Law at once.

Sollr Genl Mr Dunning There is no Question, but that this marriage solem-
=nized there would have been good before the Statute
26 Geo 2. & would be good now if transacted between
Persons resident in Scotland; all I can collect, is, that
Huber a Dutchman has laid down a Position, with
respect to different Provinces, which is very singular,
& will derive no weight from his Idea; if this was
the Idea of Courts of Justice in Holland, much remains
to prove it ought to have weight in England, where
neither the Canon, nor Common Laws have adopted
this Opinion; It is a Question that does not appear
to have been agitated in Huber's own Country; I sh.
waste your Lps time, in noting the bad Policy of
such an Institution; Every Country has a Power
to prescribe to its own Subjects; but Regulations wch
are proper to be observd in England, may be pro-
=ductive of Inconvenience, if extended further; the
Legislature, when they thought it expedient to enforce
it, in this Part of the Kingdom, saw the Impropriety
of extending it to Scotland, & therefore expressly ex-
=cepted that Country by the Proviso: They have stated
the Allegation as if no such Provision had been con-
=taind in the Act; the Allegation, in effect, says, it is
very fit the Regulation sh. have force in Scotland, tho
the Legislature have said otherwise; they say, this

x Huberus de conflictu Legum

Regulation shall accompany Englishmen wherever they
go, if so Scotsmen coming into England might marry con-
=formable to the Law of Scotland; but the Legislature
declares it dont mean to substitute a different Law in
Scotland, from what operated there before; we insist that
Scots coming here must conform to the Law of Engl.
Foreigners coming to England must comply with the
Local Law; you cant extend your Regulations beyond
the Limits of the Kingdom; if the Marriage was so-
=lemnized on this Side Tweed, the Law of England must
prevail; if on the other Side, you will enquire how
the Law of Scotland operates in these Cases.....

Dr Calvert This is a Cause of great Consequence, by the Decision
of which, against the marriage, many Individuals will
be affected, & have the legality of their Marriages called
in question; the Plt, in the present Case, dont pray to be
relieved, against any Imposition of the Deft. she was
20 Years of Age, at the time the Affair happend, therefore
in all probability not very open to Imposition; She
entered voluntarily into the Scheme, acquiesced in it
& lived happily with the Deft. a considerable time, &
never contested the Validity of the Act, till many
years after she came of Age. It is a Consideration
for the Gravity of this Court, whether she can come
to be relieved agt her own Act, & confessing her own
Turpitude; Suppose a Person, who intends to marry
another, in order to obtain a Licence, swear himself
a Major, when in fact he is a Minor; would the Ct
allow him afterwards to come & contradict his
own Act, & alledge his own Turpitude to set it aside?
Much Time & Debate has passd before we were
allowd to go into the Merits; I must observe, there
are 2 Ways of opposing a Plea, 1. by objecting to par-
=ticular Parts, or 2d. to the General Law. In the present
case the Country called Scotland, & not Persons who are
Scotsmen, was in the Contemplation of the Legislature.
The Judge below, pronounced for the Deft. on account
of the Law, (i.e. the Proviso) which was stated partially
in the Libel; I expect to hear, there is a distinction in
the Proviso between Scotland, & Parts beyond Sea; viz
"That nothing herein containd shall extend to
"that Part of Gr. Br: called Scotland — nor to any
"marriages solemnized beyond the Seas; It may
be urgd, that the Words are stronger in the latter
case; as if it sh. not be meant as a domestic
Regulation in Scotland only; it is the Usage in
Acts of Parlt. to say, nothing shall extend to that
part of Gr. Br: called Scotland; but here it was
inserted on a Supposition, that the Objection might
be made, as to the Marriages solemnized beyond the
Seas; would the Legislature be more strict with respect

x so decided by Dr Harris in 4 Burr Ct. Feb. 1765 Williams. agt Spearing...