to Scotland than foreign Parts; the Preamble & Recital is in very general Terms; according to wch It was the Intention of the Legislature to prevent Clandestine Marriages, but not, that every such Marriage, sh^d be void without distinction; there is a very material difference between the Preamble & enacting Part of the Statute; there is as Puffendorf[a] observes, the Ratio Legis, i.e. the general Object, & the Mens Legis, i.e. what was intended; here the two are confounded together; the Reason, was the Fleet Marriages; the Object was, to get rid of those scandalous Marriages; it dont appear, that Marriages[b] celebrated elsewhere was in the Contemplation of the Legislature, which has specially excepted those in Scotland; the Gentlemen will endeavour to establish the Clause, as being less general, than I contend for: any Regulations, extend to all the Subjects of the Country, where they are made: All temporary Inhabitants, are Subject to them; an Act performd by a Temporary Subject according to the Law of the Country where he happens to be, will be valid every where; the reason is, because they are protected by those Laws; many nice Questions arise from hence, wch, I dont think, apply to the present Matter in Debate: according to some Authors, Every one carrys with him, his personal Abilities & Disabilities, of Majority & Minority, wherever he goes: Other Authors, who are equally respectable, deny this Position. I dare say we shall hear of Huber de Conflictu Legum; & Scrimshire's[x] Case before Dr Simpson in the Consistory of London. where previous to the Mariage Act, In Scrimshire a Minor of 20, was married at Boulogne (to Miss Jones aged 18) by an Irish Priest, not resident there, but a Traveller; whereas the Laws of France require Parties to be 25, before they can be deemed Majors, & the Person solemnizing such marriage, must be a resident Priest, settled, where the Act is done; or else licenced: Mr Scrimshire was proved, to be domiciled in England, accidentally, at Boulogne, & no Subject of France; the Parl^t of Paris therefore determined, he was to be considerd, as if he remaind in England, & subject to the Law of his own Country; his Marriage wd have been good here, at that time: Sir Edwd Simpson determind, on Solemn Argument, that no Personal Qualities c^d follow a Man into a foreign Country, that the Marriage, being invalid, by the Laws, of France, must be null likewise in England.

(b) vid § wch says. "in "Prisons, & other "Places.

x Vid. fol. 422.

I argue that a Personal Disability cant be carried into a foreign Country, no more than a Capacity to contract: It is said by Huber[a], that every Contract shall be liable to the Laws of the Country where the Contractor is domiciled; but this is liable to many Objections; if è contra, the Law of the Place where the marriage is had, is to be predominant, the Opponents may ask, wh^r an Incestuous Marriage celebrated here between the Subjects of a Country where those marriages were permitted, would be legal, valid, I answer, no, because it is an Abomination, & contra bonos mores; the Opinion of Huber[a] cannot be Law in Holland; for tho, he says "Sæpe fit, ut Adolescentes, Sub "Curatoribus Agentes, abeant in loca, in quibus Curatorum Consensus, ad matrimonium non requiritur "celebrant ibi matrimonium, & mox redeunt in "Patriam; Ego existimo hanc rem, manifesto pertinere "ad Evasionem Juris nostri, ac ideo non esse Magistratus hic obligatos è Jure Gentium, ejusmodi "nuptias agnoscere, ac ratas habere: Yet he offers, not, one Instance, of his Idea, being adopted, by the Courts, of that Country; if he had, to be sure the Determinations of Courts would have proper Weight: I shall perhaps be told, that a Man make a Will which shall not operate in all Places; there is no Impropriety in a Man dyeing Testate in one Country & intestate in another, but this cant apply to a marriage which must be valid every where Voet speaks of nullity of marriage much in the same way; the Authors do say such marriages ought not to be allowd but not that they are not allowd Every State shall recogneze an Act done, by its own Laws; It is ludicrous to suppose a Man legally married in one State, & not married in another; the Magistrates would not say this is a bad Marriage: If a Frenchman upwards of 21 & under 25 should marry in England, would it be set aside in France? The Digest[x], says the Laws of the Place where the Contract is made, sh^d not operate, but those of the Place where it is intended to be carried into Execution; this Doctrine applied to many Questions, is true; as if a Man in France enters into an Agreement, with another, to pay money in England, the Laws of England must be the Guide to the Party; It will be said too, that whatever is done in fraudem Statuti, with a view to evade the Law, is invalid; if this Doctrine is to be applied to the Case of a Marriage, the Party must be proved to have alledged something untrue, to procure such Marriage; as Brower[x] de Jure Connubiorum, observes "Si Liberi in eadem cum parentibus degentes Civitate, parentibus orbos, & ætate majores, se simulaverint, ficto vel adumbrato nomine, ne "agnoscerentur nuptiæ, denunciari curaverint, vel "non in patria, sed in alia Civitate, Provincia, vel Regno

(a) de Conflictu Legum. Lib. 1 Tit. 3.

Lib. 44. T. 7. L. 21.

x Lib. 2. c. 24. § 44.

x Digest. 44. 7. 21. Contraxisse unusquisque in eo loco intelligitur in quo, ut solverit, se obligavit.