" In quo Extranei & ignoti sunt, hæc omnia peregerint,
" irritum esse conum matrimonium, non tantum ob
" defectum paterni Consensus, sed et ob neglectam
" Legis, cui fraus facta est, Observationem Hollandiæ Curia
" sapius judicavit." That Banns are asked under
fictitious names, or that a false Oath is taken of the
Majority of either Party; If a Clergyman had gone
with their Parties to Scotland & married them there;
would he be liable to be indicted? if not, why are these
Parties within the Proviso? one part of the Statute
will apply, as well as another.

By 10 Anne. c 19. § 178. laying a duty on licences: "all
" Persons celebrating marriage clandestinely without
" Stamps, shall forfeit, the Party, 10 £. the Clergyman
" 100 £." there is the same Proviso in that Act with
respect to Scotland, as there is in the Marriage Act:
I would ask whether they would be liable to those
Penalties in the present Case? or wh^r. any Court
would decree it; The 26 Geo 2. c . is a restraining
Act, & may be considerd in the light of a criminal
Statute, & therefore ought not to be construed strictly
besides, the ill Consequences attending a Sentence to
annull the Marriage, & the Inconveniences which
many Individuals will necessarily experience must
have great Weight.

Before Ld Ch^r. Northington 1762. " Bedford & Verney. 1000 £ was left by Will, by
" to . . . . . on condition that it sh^d. be forfeited, if
" She married without the Consent of her Guardians, in
" which Case he bequeathd the said £ 1000 to
" the Legatee was married in
" Scotland without the Consent of the Guardians, & a
" Bill in Chancery was filed for the Recovery of the said
" Legacy, the Def^t. answerd the Marriage was had in
" Scotland, in defiance of the 26 Geo 2. & so null & void
" & that She had therefore incurrd no forfeiture;
" Ld Northington said it was as good a Marriage, as if
" it had been celebrated in St Pauls Church, & therefore
" decreed the Legacy to be forfeited . . . . . .

Before Sr Thos. Clarke M^r of the Rolls . . . " **Brook** & Oliver, a Woman who was a Ward of Chancery
" being married in Scotland, application was made to
" the Court for a Settlement upon her, in consideration
" of her fortune (viz 10000) Her Guardians alledging it
" was no marriage & declined to pay the fortune; His
" Honor, gave his Reasons, why the Marriage was good, &
" referd it to a Master in Chancery to apportion the
" Settlement to the Fortune. . .

I dont quote them as Cases determind, but to shew
the Sentiments of the Judges on this Point: Even,
Childrens Children may be affected, if this Marriage

should be set aside, the Consequences therefore to Individu-
:als, is a material Consideration: for tho, many have been
married over again, many have not; there is no limita-
:tion in point of Time for bringing Suits of this kind;
In common Cases, no Suite can be brought to set aside
a marriage after the Death of the Parties; but this is
a Nullity by Act of Parliament. . .

There was a Case before the Kings Bench, on the Settlement
of a Pauper. " Monday 26 Novr. 1759. Two Justices removed
" Edw: Young jun: Rebecca his Wife, & Mary their Child, from
" Chilham to Preston near Feversham in Kent, & the Sessions
" confirmd in all Points the Order of the 2 Justices.

2 Burrows. 897. Rex v. Inhabitants of Preston. . .

" The Case as stated to the Sessions, was, that Edw. Young jun.
" being legally settled in Preston, & not being then a Widower
" was on 25^d Jan: 1758, without the consent of his Father,
" (then living) married by Licence in the Parish Church of
" Teynham, to Rebecca Drury, (who was settled in Teynham, & is
" removed to Preston by said Order, as the Wife of the said
" Pauper:) the said Ed. Young being then an Infant of 20 Years;
" that Rebecca was afterwards brought to Bed, in Chilham,
" of Mary, removed by the Order, whereupon they adjudge
" & ordered, the Order of the 2 Justices to be in all Points
" confirmd; Mr Lee (who had moved to quash these Orders,
" objected to that Part of them, which relates to the Woman
" & Child, for that the Marriage was absolutely null &
" void, by the express Words of the Marriage Act 26 Geo 2. c 33
" § 11, as the Pauper not being a Widower, & being under Age
" was married by Licence, without the Consent of his father,
" who was then Living. Mr Knowler who was Council on the
" other side, owned the Words so strong, he could not get over
" them, unless the C^t shall think a declaratory Sentence ne-
:cessary. Mr Robinson, (who was on the same side), entered
" into the Defence of these Orders; cited 2 Str. 1066. to shew the
" word, void, may be construed, voidable; & 1 Mod: 69 & 1 Salk.
" 68. Barber & Dennis, where it was held immaterial, wh^r.
" the Apprentice de facto was legally so, or not. .
" Mr Norton beginning to speak, Ld Mansfield stopped
" him, commended Mr Knowler for his Candour, in giving
" up the Point, and took the Distinction between Acts of
" Parl^t. made against one of the Parties, & for the Benefit
" of another of the Parties, & where such other Party has
" an Election, either to take Benefit of it, or not, & Acts
" of Parl^t. made against Both. This is an Act of Parl^t.
" made agst Both, & the Marriage is thereby declard abso-
:lutely null & void, to all Intents & Purposes, whatsoever;
" so that it is not like the Cases cited.
" The other Judges concurrd & also observd it was made
" against both, & Justice Foster added, against the
" innocent Children of Both, and he said, it would be
" against the Spirit of the Act, to understand it otherwise
" than that the Marriage shall be absolutely void.
" Wherefore Per Curiam, the Orders must be confirmd as to the
" man, but quashd as to the Woman . . . . . .

& now Serj^t Lee