If the Idea of Domicile is to take Place, it will be subject to this Inconvenience; that Englishmen married in Scotland will not be able, to ensure the Validity, of such Marriage unless, they retain to themselves, a Proof, that they resided, so long, in that Country, as may destroy any Presumption, of their going there, to evade the force of the Act of Parl.t which was intended to facilitate the Proof of Marriage, by Licence, or Banns. as the Legislature has not yet determined these Marriages should be prohibited, we hope, in the present Case, that your Lps will determine in favor of the Marriage & dismiss my Client, the Defendant from this Suite....

26 Geo. 2. C33 §11. . . . .

Mr Beaver resp.

I shall endeavour, my Lords, to construe the 26 Geo. 2. according to the Rules of construing Statutes; if the Marriage is null, the Celebrator will be consequently liable to Transportation: the Gentlemen would have the Proviso extended by Equity, against the very Words. Can they distinguish between a Marriage to be solemnized beyond the Seas, & in Scotland; if the Legislature meant this, why not express it; the Nature of the Contract itself is to be considered; it ought not to be set aside, on the same Principle as Money & Mercantile Contracts, which was the Case of Robinson & Bland; there is a Proviso, that there shall be no Enquiry whether the Party did, or did not reside: In Bedford v Verney. 1699; Barnes & his Wife, the Lt of Chancery concluded the marriage was good; but it would absurd to take care of the Fortune & not of the Person....

Burrows Rep:

& Oliver v Oliver - - - -

The Judges desired these Cases, might be accurately examined for the Information of the Court, adjourned to Thursday Evening at 6 o'clock on the 3 of December

Vid. Fol. 418 Calvert's Speech

Wednesday 28 July 1762

Serjeant's Inn Hall before the Lord Chancellor and the Judges of both Provinces

Serjeant's Inn Hall before the Lord Chancellor and the Judges of both Provinces

Both Proctors consented to a Court, & pare

Consistory of London 16 June 1752

Jones agt Scrimshire The Chancellor declared, he had a Doubt on a Point, not spoke to by the Counsel. He observed that the Contract on the Face of the contracting words deposed to by Commins the Priest seemed to be conditional; the words being (If Holy Church will permit) that the Marriage in the present Case, being set aside by the Laws of France, it may possibly be inferred, that it was so France, it may possibly be inferred, that it was so set aside, by reason that Holy Church would not permit such a Marriage, he further observed that no Instance occurred to him, where a Marriage by a Romish Priest had been pronounced for in England but where there had been a Consummation (which would have made the Contract binding on the Parties without the Intervention of a Priest: He added that

Wednesday 29 July 1752

Scrimshire otherwise Scrimgeor } to be sentenced at the Petition
agt
Do. . . . otherwise Do. . . . } of both Proctors
Altham. Boggs

Both Proctors consented to a Court, & prorected definitive Sentences in writing which for their Respective Parties, they prayd to be read & promulged; the Judge having maturely considered the Proofs in this Cause made, by his Interlocutory Decree dismiss'd Boggs Client, but condemned him in £20 Costs, in the name of Expanes, & decreed Monition for Payment in 30 days after Service, not to go out in 15 Days. Both Proctors accepted Decree, as far as make for their respective Parties, & otherwise protested &c. .

The following Particulars were not mentioned by D.r Calvert but are taken from Duplessis de la Darriere's Opinion in Scrimshire's Case, stated in the Proceedings before the Consistory of London

It is an incontestable Principle, that the Validity of Acts must be tryed & adjudged; by the Laws & Formalities of the Country where they have passed; & tho. England sh.d not be provided with Laws, capable of punishing for the Breach of them, when a Thing is once done; yet we sh.d conceive, she w.d not determine by any other Laws than those of France, in deciding the fate of a Marriage had in France; & the more so, as our Parl.t has given several Examples, of her scrupulous Observance of foreign Laws, in Cases of Marriages celebrated in different States in the neighbourhood of France, & has lately given a recent one to England herself with relation to a marriage contracted in this Kingdom: Miss Grandsire a Roman Catholic, born at Calais 12 April, having at the age of 19 years married in England, Mr Coeslogon in presence of her Mother, & with the presumed Consent of her Father (who by the Laws of France could not give his express Consent) became a Widow in 1731. On 25 March 1732. She being then 23. married Mr Terrier an Englishman of a different Religion (without the Consent of her father agt the Edict of 1685) & by a Protestant Minister; Mr Grandsire the father appealed from a Grievance, complained of a Rape the prosecution whereof, by his death, he left to his Children, who added all the Prohibitions, from marrying in a foreign Country; from marrying Protestants, & the want of a proper Priest &c. all these Objections were of no weight in the Grand

Grandsire & Terrier. Ala Grande Chambre