Chamber against a Marriage solemnized in England by a Widow above 21 Years of age.
If the Parl.t of Paris judges of Marriages of French Subjects contracted in England, by the Laws of England laying aside those of France, which cannot pass the Sea; It follows from thence by a reciprocal way of reasoning, that it will not judge, by the Laws of England, as to the Marriage of English Subjects, solemnized within its own Jurisdiction, but according to our Customs & Usages . . . . .

Delegates
Dec. 5. 1768
D. Harris.

I am Council in this Case in behalf of Mrs Compton, who brought a Suit of Nullity of Marriage in the Ct of Arches agt Mr Bearcroft, in which having given a Libel the Judge thought proper to reject it & to dismiss the Def.t from that Decree. She has appeald to this Ct, & Your Lps has ordered us to go into the Law, I am at Liberty to suppose the whole Libel proved; the Def.t in his answers to our allon in a Suit of Jactitation (originally brought) that in 1761, he took a Minor, of 20, out of this Kingdom, (without the Consent of her Mother or Guardians) to be married where fewer Ceremonies were requird; he went to elude the Law, & in fraud of the Act of Parl.t remaind in Scotland only a few Hours, & did not consummate there; the Question therefore, is, whether the Act done is not void, on account of his going to Scotland with no other view than to avoid the Law; Mr Solicitor Gen: said, that before 1754. the Marriage would have been good; I agree with him, it would have been valid, but not legal. We are asked, how long a Man ought to be commorant in Scotland, to be clear of Elusion; I do not say an Hour, if he can find a Lady there, in whose Company, he is long enough to fall in Love, Court, & marry her; I am to prove, he went there merely to elude the force of the Statute of 26 Geo. 2. I need not inform your Lps of the Great Pains taken by the Ecclesiastical & Statute Laws of this Realm, to prevent Clandestine Marriages. By the Council of Lateran, the Parties were punished at Discretion. The Canon Law suspends the Clergyman for 3 Years, & excommunicates, the Parties & Witnesses.

A. 1216. ... vid. Stratford's Constit: 1343 in Lyndwood ... Lib 4. Tit 3. }

By 6 & 7 of King Wm 3: a Clergyman celebrating marriage in an extraparochial Place was liable to 100l penalty.

By 7 & 8 Wm 3. c 35. a Parson marrying without Publication of Banns, or Licence forfeits 100l, the Man married 10l. & the Clerk assisting 5l. ...

10 Anne. cap. 19. "Every Person in Orders who shall marry "any Persons without Publication of Banns, or Licence "from the proper Ordinary, shall forfeit 100l. If the "Offender be a Poisoner in any Gaol, other than the "County Gaol; on Conviction for such Offence, he shall "be sent to the County Gaol; & if any Gaoler shall "permit any Marriage to be solemnized in his Prison "with Licence, or Publication of Banns, he shall "forfeit 100l ...

& without

The Spiritual, as well as the Temporal Courts, have been filled with Suits about Marriage; by which

vid. 62 Canon of 1603.

Property is rendered uncertain, & strange Confusion must ensue: By the Divine Law, as well as the Roman, the Canon Law, & the Law of Nations, the Consent of Parents is required: "Jure Divino Consensus non modo contrahen- "tium sed Parentum requiritur.

2 Deut: Cap. 7. V. 3. Concerning the Idolatrous Nations, it is said, "neither shalt thou make marriages with them; thy "Daughter thou shalt not give to his Son; nor his Daugh- "ter to thy Son . . .

1 Exodus. Cap. 22. V. 16-17. "If a man entice a maid that is not betrothed, & lie "with her, he shall surely endow her to be his Wife. "If the Father refuse to give her, he (the Inticer) shall pay "Money according to the Dowry of Virgins.

Judges . . . . Cap. 21. V. 17. 3 Judges when the Tribe of Benjamin was to be extinguished "The Men of Israel swore in Mizpeh, saying, there shall not "any of us give his Daughter unto Benjamin to Wife . . .

Puffendorf L. 6. c 2. § 3 The Natural Law requires, that Children should not oppose the awefull Directions of their Parents . . . . .

Lib. 1. Tit. 10. Instit. Sect. 12 . . . . Jus bas Nuptias contrahunt qui secundum præcepta Legum contrahunt. dum tamen. Si filii familias sunt, Con- =sensum habeant Parentum.
Si adversus ea, quæ diximus aliqui coierint, nec Vir, nec Mulier, nec Dos intelligatur.
The Canon Law was anciently conformable to the Civil; Evaristus Papa in his Decretal Epistle to the Bps of Africa, Decretum. part 2da. causa 30. Quæstion. 6 "aliter non fit Legitimum Conjugium, nisi ab iis qui "super feminam Dominationem habent Uxor petatur et "a Parentibus sponsetur, et Sacerdotaliter benedicetur. .
I will mention the Reformatio Legum, tho, that System has not received force in this Country, to shew what were the Sentiments of the Commissioners authorized to compile that Code of Law.
"Quoniam sacræ Scripturæ conveniens est, ut matrimonia "pro nullis habeantur, quæ liberi contrahunt &
Thus the Marriage of Minors was, by the Ancient Canon Law, annulld, where the Consent of Parents, & the other Requisites prescribed, were deficient, But in 866 Pope Nicolas altered the Course of that Law, & made them Good "Sufficiat eorum Consensus, de quorum Conjunc- =tionibus agitur. The Council of Trent (1563) tho it condemns those who asserted "Matrimonia irrita esse sine consensu "Parentum; aut Parentes eas irrita facere posse; yet after- wards says in its decree De Reformatione matrimonij C. 1. Sess. 24. That unless the Rules there laid down, are com- =plied with, the Contracts should have no force or Operation. I mention it to shew, that in all Countries, but ours they were invalidated long since. In most Roman Catholic Countries the Council of Trent prevails; In France it does not, in respect to Minors entering into a Contract without Consent of Parents; for their Presumption is, that it is a Rape by Seduction. According to Huber, in Saxony Liberi parentum Consensum adhibere tenentur; aliter a Successione excludi possunt, et Conjunctio talis nullitate laborat . . . . .

vid 2 part of 4 Decretum of Greg: 13. Cause 32. Quest 2. . . . . .

Lib 1. Tit. 10. de Conflictu Legum. . . . .

v. Decretum of Council of Trent at large in Bp Gibsons Speech