vid. Vinnius In Institut: Lib 1. Tit. 10.

In Holland, Daughters must be 20, Sons 25. before they can marry without Consent of Parents; Banns also are necessary; Matrimonia aliter contracta pro nullis habentur. These are the foundations of of the Marriage Law, which had ~~their~~ Divine Law for its Precedent, & stood enforced by the Necessity of settling Property, which was, by these Clandestine Proceedings, afloat in the Kingdom:

Mr Solr. General contends, that the Statute should be construed strictly, on account of its altering common Right, & being a Penal Law. (In the Case of Bland & Robinson, Ld Hardwick said, upon a Question of a Marriage at Ostend, "You must go to the "Ecclesiastical Court, they have the entire Jurisdiction "of Marriage.") But I must deny the Marriage Act to be a Penal Law; tho the Clergyman Celebrating the Marriage in England would be liable to Transportation, no Penalty attends the Clergyman in Scotland by this Act; Even in the Case of the Rebels there was a particular Law to punish Such, as had drawn their Swords against their Country. A Statute may be construed equitably, & strictly too; a Court of Equity may judge one Part; a Court of Law may judge another:

465. a. 466. 467

Plowden in Eaton & Studs. gives a Lesson on the Construction of Statutes; he says,

"It is not the words, but the Sense that makes the "Law; the Letter is but the Body, the Sense is the Soul & "Life of it; the Word is but the Shell, the Sense is the "Kernel. Again

"Equity must of necessity take Place in the Exposition "of all Laws; & Equity makes no difference between "penal, & other Laws; the best way to expound a Law "is to consider what Answer, the Law makers would "probably have given, to such a Question proposed "to them.

He goes on, & mentions the Statute 1. Edw. 6. which deprives those, who are guilty of Stealing Horses, of Benefit of Clergy; & he Says

"I by no means commend the Scrupulosity of the "Judges, who took the Law to be, that he who stole "one Horse sh: have Clergy - and procured a Second "Statute, which ousts him who stals one Horse....

So the Statute of Gloucester

"which gives Waste against him, who holds for Years, "gives it against him who holds for one Year.....

v. Plowden 86. Strange & Croker.

By Rich: 2. An Escape against the Warden, is declared to extend to all Gaolers.....

vid. 3 Co. Rep.

In Heydon's Case in the Exchequer. 20 Eliz. It is laid down

"That it is the Office of an Expositor to suppress subtle "Inventions, & Evasions, pro Bono Privato, & to add force "& Life to the Remedy provided, according to the true "Intention of the Lawmakers.....

2 Burrows. 897 - q. vid. fol. 421 of this Book.

In the Case of the King v Inhabitants of Preston concerning the Removal of a Pauper, his Wife, & Child, Ld. Mansfield said the Statute 26 Geo. 2. was made against the Man & Woman; & Justice Foster, added, Yes, & against their Innocent Children too, else the Statute, could not have Effect.

Bed v Constable Vaughan. 179.

The 12 Car. 2 giving a Father a Power of appointing a Guardian to his Child, by Will, was against common Right, & yet has been construed beneficially.

When a Statute is made, which alters the Law, the Meaning shall not be strained beyond the Words, except in Cases of Public Utility.

Co. 11 Rep. 736 Magdalen College Case.

13 Eliz: c. 10. was framed to prevent Leases made for more than 21 Years, or 3 Lives; whereas the 18 Eliz. c. 2. confirms all Leases made to the Queen, tho for a longer time

Plowden

"Yet If a Lease were made to the Queen colorably, & to "make her a Conduit Pipe, only to transfer the Interest "to another; such Lease is not confirmed, for it is a "Subtle Invention to creep out of the Law.

13 Eliz. avoids all Gifts made to defraud Creditors, but it did not extend to an Estate conveyd on a good Consideration, to a Person who had no Knowledge of the Fraud.....

Can Clandestinity & Common Right agree? certainly not - Clandestinity is allied to Fraud, not to the Common Law; they are Twin Sisters; Shew me a Clandestine Act, & I will Shew you a fraudulent Act. A Man's own Breast must condemn a Clandestine running away with a Minor, in order to marry her.

I shall now proceed to consider the Intent of the Statute; the Preamble declares it was made to prevent Clandestine Marriages, & not merely Fleet Marriages, here I differ from Dr Hay. I must contend that the meaning of the Exception is only to put Scotland on the footing it was before the Union. By the Scots Statute of Car. 2. 1661. we find various Penalties inflicted on the Parties married, the Minister solemnizing & the Witnesses present at these fraudulent Transactions. nay Persons, Inhabitants of Scotland, married out of Scotland, are punishable on their Return, if Banns have not been published in Scotland. It would have been hard to interfere with their Laws; the Legislature says, "Nothing herein containd shall extend to Scotland, "nor to marriages solemnized beyond the Sea, i.e. Bona Fide Marriages; Did any Legislature ever make a Law & purposely leave open, a Door, to evade that Law? Would they say, All you Young People who chuse to go beyond the Sea, shall avoid Censure?

7 April 1753. the Lords, acquainted the Lords of Session of their Intention to pass the Law; an authentic Paper to that Purport, was signd by the Clerk of the Parliament; my Conclusion is, that it appears, that no