sent it to the Commons, where it was hung up, by Appeal to the Delegates till Mr Butler came of Age, & then dropped — Allowing therefore a proper Deference to the Opinions of 2 Great Men, where as Judges, they had no Jurisdiction; it is no more than private Opinion ....

5 Geo. 2. c. 30 The famous Act, call'd, De Baths Act, "That a Lunatic should "not marry, after a Commission of Lunacy had issued, till it "was superseded; Let me suppose, Mr. Newport, on whose account that Act was made, who is now living, sh.d have a Lucid Interval, during which he should go to France & marry there; Such Marriage would be good by the Laws of France; but surely this Court would set aside: I dare say a Court in Scotland would set aside this Marriage; the Lords of Session would say, it is elusive: Why then should the present Evasion be allowd.? It is objected, that much Inconvenience w.d accrue, by Bastardizing innocent Children; I answer that out of 13 or 1400 Clandestine Marriages, I do not believe there are above 6 or 7 Couple, who have not been remarried in England; by Confirming these Marriages you erect as great a Nuisance, as the Fleet Prison, in Scotland, & thereby defeat the Act of Parl.t I know the Clamours that are raised, ag.t the Act, as if it w.d depopulate the Realm, was contrary to Divine & natural Law; but I say, unless the Civil Contract precedes, there is no religious Contract. There is no Judgement, which is not attended, with some Inconvenience, in the present Case, perhaps some innocent Children may suffer; but on other Hand, Consider my Lords, what infinite Confusion, will be produced by a Contrary Judgement . . . . . .

Dr Wynne... I am Council also, for the Appellant, Maria Catherine Compton, Spinster, who brought a Suit of Nullity of Marriage, ag.t Edw. Bearcroft Esq, in the Court of Arches. Hil. Term. 1767, the Libel was given in, stating the Facts, which she desired to lay before the Court, as a Foundation for her Prayer; that the Marriage might be declared void; That Libel the Dean of the Arches, was pleased to reject; from which Det. of his, Mrs Compton appealed to your Ldps, as from an irreparable Grievance, having the force of a Definitive Sentence; for without a Libel admitted, there can be no Cause.

It was made a Question, upon the opening this Libel, to your Ldps, whether the present Consideration, ought not to be confined to the Facts of the Libel, i.e. whether they were such Facts, as were proper to put the Question of Law, in Issue.

It is not contended, for the Appellant, that an Ecclesiastical Judge is bound to admit every Libel or Plea, that can be offerd; that would be liable to all the Objections stated by your Ldps; but it was submitted, that the Question intended to be put in Issue, being Res Integra, & a Question of so much Consequence, as well as extent, it was very unusual, & scarce warranted by Practice to go into it, upon the first sight of the Libel, without giving the Party praying Relief, an Opportunity of laying every thing before the Court, that might possibly tend, in any Degree, to instruct her Case...

Your Ldps have been of Opinion, that the Dean of the Arches was warranted in going into, & determining upon the Question of Law, upon Sight of the Libel; for that is what he most unquestionably has done; he could have no doubt of his Jurisdiction, as was thrown out what Acts & Ceremonies, will constitute the validity of Marriage, belongs to the Cognizance of the Ecclesiastical Court. Letters of Request having been regularly & legally (in a Case warranted by the 26 Hen. 8. c. 9.) granted by the Chancellor of Worcester (in whose Diocese the Def.t resides,) to the Dean of the Arches, there can be no doubt, he was the proper Ecclesiastical Judge, to take Cognizance of the Question.

It was suggested, the Libel may have been rejected for being informal & imperfect, because it recites only a part of the Law, & omits the Exception, which takes the Case out of the Operation of the Law: but this could be supposed, by such only, as are unacquainted with the manner of drawing Libels in the Ecclesiastical Court. The Usual form of a Libel, is that of a Syllogism: Of which, the Major Proposition is a Recital of the Law, upon which the Party founds himself... The Minor, is the Deduction of Facts, to bring his Case within the Operation of that Law...

The Consequence, is the Prayer, that Proof being made of the Facts, the Judge will pronounce, his Sentence agreable to the Law.

This is the Form, but it cant be supposed to be the Practice of those Courts, or the Apprehensions of the Parties, that the Judge takes the Law from the Recital in the Libel. The Law upon which the Appellant relies, is a Public Act of Parl.t of which the Judge of every Court, is bound to take notice, Judicially, & ex Officio. So much of it is recited, as makes for the purpose of the Party, for whom it is given in;