Regard is to be paid to it, where it is proved that the Parties went into another Country to make the Contract, merely to evade the Laws of their own; i.e. to do such an act, or in such a manner, as the Laws of their own Country will not permit: Such a Practice, he says, no Country is by the Law of Nations, bound to allow of, or to ratify the Acts done, by its Subjects, in such a manner; because it manifestly tends, to the Subversion of its own Laws, and in this Voet certainly agrees with him, in his Treatise de Statutis, which is in his Commentary on the Lib. 1. Tit. 4. Digs. & upon D. 28. Tit. 2. de Ritu Nuptiarum. Both instance the case of Marriages, in fraud, of their own Laws.

The Gentlemen have thought it necessary, in support of their Side of the Question, to treat these Writers with some kind of scorn: Who is Huber, said Mr Solicitor Gen: & an Jansweer, he is no Legislator indeed, but a very good Lawyer, & a very good Reasoner; the Question is not, who he is, but whether there is Reason in what he says?

Vocalist, said, if we could produce the Determinations of Courts of Justice, it would be something; I wondered to hear this remarked by the Gentleman, who read to you Lib. 1, the Passage out of Brower who was Principal Judge at Leyden for many Years, & not a private Professor (he died in 1683) His words are, "Si Liberi in eadem cum Parentibus degentes Civitate, Parentibus Orbos, & Ætate majores, se simulaverint, ficto nomine ne agnoscerentur nuptias denunciari curaverint; vel non in Patria, sed in alia Civitate vel Regno, in quo Extranei & Ignotissimi hæc omnia peregerint, irritum esse eorum matrimonium, non tantum ob defectum paterni Consensus, sed et ob neglectam Legis (cui fraus facta est) Observationem, Hollandiæ Curia sæpius judicavit."

Here therefore is the Testimony of a Magistrate, that there have been repeated Determinations of the Court of Holland, that Marriages performed in foreign Countries, to elude the Law of that Country, to which the Parties were subject, & particularly to get over the want of Consent of the Fathers of the Parties, without which the Marriage would not be valid at home, are void.

Do. Jure Connubiorum Lib. 2. cap. 2. A.

I have met with a Case decided in the Parliament of Paris in 1716, which is in point, excepting, that it is stated that the Act was done by one of the Parties to evade the Laws of France; in that respect, it is a stronger Case than the present; the Case is related by Mons: Hericourt in a very good Work, called, Les Loix Ecclesiastiques de France dans leur Ordre naturel; published at Paris 1719. His words in his fifth Chapter which treats of Marriages, Art. 2. §74. are these. "Ferret maintains, in his Treatise of Abuses, that a Marriage, contracted by a French Person, during Minority, without the Consent of the Father, in Countries where the Discipline of the Council of Trent, is followed, is good: there are several Arrets, which have so determined it; Supported By the Authority of this Author, & the Arrets, Argued in the Grand Chambre, that a Marriage celebrated at Liege without Fraud, between a Young Man of Lyons, who was a Minor, & a Woman of the Diocese of Liege, could not be set aside, upon an Appeal, as from an Abuse; I said, that this Marriage could not be boasted upon, either as Clandestine, or as a Rape by Seduction; because that in the Diocese of Liege, the Consent of Parents to the Marriage of Minors, is not necessary, to avoid Clandestinity, or the Presumption of Seduction: I added, that a Marriage could not be good in one Country, & void in another: that to make an Act valid, it is sufficient to have satisfied, the Formalities prescribed, by the Law of the Place, where the Act passed. Nevertheless, by an Arret, passed in the Roll of Vermandois A°. 1716 It was judged to be an Abuse." (N.B. The Decrees of that Court are registred, without any Reasons assigned by the Judges, & therefore the Reporter goes on, to assign the Reasons upon which he supposes this Arret to have been given.) "In this Case, (says he,) the Ordonnances which forbid Minors to marry without the Consent of Parents, in whose Power they are, seem to have been considerd, as personal Laws, which follow the Minors, wherever they go, & which found a Presumption, that they were imposed on, wherever they did the Act: or rather, the Court presumed, from the Quality of the Parties, that there was an actual Subornation of the Young Man, on the part of the Mother of the Young Woman, with whom the Man lodged.

(Appel comme d'abus ...)

Qu. It was asked, how long, according to this method of Reasoning, must a Subject of England have resided in Scotland, before he can safely marry there?

Ans: The Answer is, the Time of his having resided there is totally immaterial: It is not the Shortness of the Time, of his having been there, that will invalidate the Marriage, but his going with a fraudulent Intention, for no other Purpose, than to evade the Law of England: and whoever would endeavor to invalidate the Act, must prove that it was performd in that Country, merely with that View.

It was said, that the Policy of different Countries, is different, in this, as well as many other Respects: This certainly true, & it is very unreasonable for any Nation to require another, to desert its own Policy, & conform to that of any other: But what has the Policy of one Country to do with the Practice of the Subjects of the other? What right, has one Independent Country to prescribe, what shall be held a good Contract in another? What Injury is done to Scotland, for Instance, if an English Man & Woman, are not allowd the Privileges of married Persons in England, which would be allowd them in Scotland? Is it not very truly stated by Huber vid. §8.