And the Priest celebrating without such Publication is to be suspended for 3 Years from the Execution of his Office, & the Parties to the Marriage to be enjoind condign Pennance, for their Contempt of the Orders of the Church; yet the Marriage was declard by the Decretals Lib. 4. Tit 3. C. 3. Cum Inhibitio.[NB] ... to be valid & indissoluble, agreable to the Decision of the Council of Lateran, held under Pope Innocent the 3d. the last Year of King John's Reign, & so remained to the Council of Trent.

NB. These words begin the Chapter

a°. 1215 ...

a° 1547 ...

That Council tho, it has gone so far, as to pronounce an Anathema against those, "qui falso affirmant matrimonia a Filiis Fam: sine consensu parentum contracta irrita esse." (which was in opposition to the Reformers, who maintaind that the Marriages of Minors, without the Consent of their Parents were null & void, both by the Law of God, & the Law of Nature.)

Yet the same Council in its Decree De Reformatione Matrimonii Cap. 1. Sess. 24. reciting the great Mischiefs of Clandestine Marriages, which the Church had always detested, & which its Prohibitions had not had sufficient weight to prevent, declares them to be utterly null & void: the Words are, "Qui aliter quam præsente Parocho vel alio Sacerdote, de ipsius Parochi, seu Ordinarii licentia duobus vel tribus testibus, matrimonium contrahere attentabunt; eos Sancta Synodus, ad sic contrahendum omnino inhabiles reddit, et hujusmodi Contractus irritos & nullos esse decernit, prout eos præsenti Decreto irritos facit & annullat." ...

Declar.n du 26 nov. 1639. Art. 1. Hericourt p. 474.

In France the Constitution of the Council of Trent, annulling Clandestine Marriages has been received; but they have gone further, & notwithstanding the Councils Anathema, by an Ordonnance of France publishd in 1629, the Marriages of Minors under 25, without Consent of Parents, or Guardians, are null & void.

And in some measure to colour their disregard to the Decree of the Council, they have made use of a Contrivance:- By the Canon Law, where it appears, that either of the Parties, was forced, or seduced into a Marriage, it is not good, Consent, which is of the Essence of Marriage, is incompatible with either Force or Fraud. The French Lawyers therefore have declared, that where a Minor under 25, marries without the Consent of Parents or Guardians, the Præsumption Juris, et de Jure, shall be, that the Minor was forced into the Contract, consequently it shall be void.

The Protestant Churches in Germany I beleive in a manner universally, & with a very few Exceptions, hold the Marriage of a Man under 25, & a Woman under 20, without

o. Viz. Frizeland

The Consent, of the Father or Mother, if living, or if they are not living, of the Proximi Cognati, shall be ipso Jure null & void. They were declared to be so in Holland, by an Edict of the States in 1580, which was afterwards declard by the States General of the United Provinces in 1656 to be the Law of all the Countries Subject to their Jurisdiction.

Voet de Ritu Nuptiarum. § 11.

It is well known, that in England, down to the time of the Reformation, the Power of the Popes prevailed, almost beyond what it did, in any part of Christendom: there was scarce any Oppression, or Corruption of the Court of Rome, that was not submitted to, & yet I think it is to be very clearly collected from Bracton, that in his Time, which was the meridian of the Papal Power, here too, (the Reign of Henry 3d) Clandestine Marriages were not held good by the Law of England, so as to entitle the Parties to the Privileges of Persons lawfully married; & to render the Issue legitimate. The Place, I mean, is Lib 2. Cap. 39. "Sciendum, quod in facie Ecclesiæ, & ad Ostium Ecclesiæ, constituenda sit Dos; non enim valet Constitutio, facta in Lecto mortali, vel in Camera vel alibi ubi clandestina fuerint Conjugia: quia si non valeant clandestina Conjugia, hæredibus, quoad Successionem nunquam valebunt Uxoribus, ad Dotis exactionem ...

However the Provincial Constitutions of the Bps, which did not always square exactly, with the Law of the Land, adopted the Decretals, which endeavourd to restrain Clandestine Marriages by Punishment, of the Ministers who celebrated, & the Parties between whom they were celebrated, & all others in any Degree concernd in them, rather than by declaring the Contract void.

There is a Constitution of Mepham Bp of Canterbury in the Time of Edw. 3d. which is in Lindwood Lib. 4. Tit 3. by wch the Decree of the Council of Lateran (which forbids all Persons to contract Matrimony, till the Banns have been first publishd, in the parish Churches of the Parties, upon several Solemn Days, in the face of the Congregation:) is enjoined to be firmly observed by all Priests, who are orderd to publish it in English: by this Constitution, the Punishment of 3 Years Suspension, is inflicted upon the Priest, celebrating such a Marriage, & the Constitution is to be enforced upon the Parties cos pœna debita per cellendo. which Pœna Lyndwood in his Gloss, says is Arbitraria, cum non exprimatur; & goes on, hodie vero, ut aliqui volunt, sunt ipso facto, excommunicati. And by a Constitution of Bp Stratford, Mephams immediate Successor, all Persons celebrating, or being present at Clandestine Marriages, incur the Sentence of the greater Excommunication, ipso facto.

Qu. ...

Heliod in ye time of Hen: 3 & 6 ...

Thus the Law stood at the Time of the Reformation; & if it sh: be considerd what kind of Punishment, the