Sussex Peerage Case [1844] 11 Clark and Finnelly 85, 8 ER 1034
Report Date: 1844
[11-Clark & Finnelly-85] THE SUSSEX PEERAGE [May 23, June 13, 25, and 28, July 9, 1844].
[Mews' Dig v 5; vi. 522, 536, 696, 813, 915; vii. 632; viii. 319, 320; xiii. 1883, 1888. S.C. 8, Jur., 793. Adopted (i.) as to admission of entry in Prayer Book in In re Lambert, 1886, 56 L.J. Ch., 122; (ii.) as to admission against interest, in Smith v Blakey, 1867, L.R. 2 QB, 332; (in.) as to expert evidence, in In re Coppin, 1866, L.R. 2 Ch. 53; and of. Reg. v Salvage, 1876, 13 Cox. C.C., 178; In the Goods of Dost Aly Khan, 1880, 6 P.D. 6; and (iv.), as to construction of statutes, in Cargo ex Argos, 1873, LX, 5 P.C. 153; River Wear Commissioners v Adamson, 1877, 2 AC 778; Commissioners for Special Purposes of Income Tax v Pemsel, (1891), A.C. 543.]
Royal Marriage Act-Evidence-Practice-Construction of Statutes.
The Royal Marriage Act, 12 Geo. 3, c. 11, extends to prohibit the contracting of marriages, or to annul any already contracted, in violation of its provisions, wherever the same may be contracted or solemnised, either within the realm of England or without.
In a claim of Peerage, where the question was whether the deceased Peer the father of the claimant, had been married or not, a Prayer-book, found after the death of the claimant's mother among her papers, was received, and an entry made in her handwriting, declaring the fact of the marriage, read from it, not as Conclusively proving that fact, but as a declaration of it made by one of the parties at the time. (Infra 11 Cl. and F.], p. 98.)
A will of the deceased Peer, made many years before, his death, declaring, and in the most solemn form, his marriage, and the legitimacy of his son (the claimant of the Peerage), was proposed to be read as a declaration made by one of the parties; but it was rejected, because the date, and certain expressions in it, showed it to have been written after a suit to annul a marriage of the deceased Peer had been instituted by his father, and because there was nothing to show that that marriage was not the very marriage in question. (Infra " Cl. and F.], pp. 99 to 103.)
The declarations of a deceased clergyman to his son, to the effect that he had

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celebrated a marriage between the deceased Peer and his alleged wife, are not receivable in evidence as the declarations of a deceased party made against his own interest; such interest not being an interest of a pecuniary nature.
The law does not recognise the apprehension of possible danger of a prosecution as creating an interest which can bring these declarations within the rule in favour of their admissibility in evidence upon the ground of their being declarations made against the interest of the party making them. (Infra [11 Cl. and F.], p. 103 et seq.)
A professional or official witness, giving evidence as to foreign law, may refer to foreign law books to refresh his memory, or to correct or confirm his opinion; but the law itself must be taken from his evidence.
A Roman-catholic Bishop, holding the office of coadjutor to a Vicar-apostolic in this country, is in virtue of that office, to be considered as a person skilled in the matrimonial law of Rome, and therefore admissible as a witness to prove that law.
In a claim of Peerage, where, evidence has been produced for the purpose of establishing a certain point, the party who has produced it will not, should the Crown call evidence of a contradictory [11-Clark & Finnelly-86] kind, be allowed to produce additional evidence confirmatory of the first.
Before the claimant's junior counsel summed up the evidence previously to the opening of the case on the part of the Crown, the counsel for the Crown ware required by the Committee to declare whether they would or would not call evidence on a question of foreign law, so as to enable the claimant's counsel to determine whether they would then (as they could not afterwards) produce any additional evidence on that question.
By the Judges: - The rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are of themselves precise ad unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do, in such case, best declare the intention of the Legislature.

Soon after the death of his Royal Highness the Duke of Sussex, in the year 1843, a petition was presented to Her Majesty by Augustus Frederick D'Este, claiming the honours, dignities, and privileges of Duke of Sussex, Earl of Inverness, and Baron of Arklow.

This petition, stating the grounds (see Lords' Journ for 22d. August 1843) upon which the claim rested, was referred by Her Majesty to the Attorney-general to consider and report thereon. Evidence in support of the claim was laid before the Attorney-general. The facts, as they appeared from the petitioner's printed case, were these: - His late Royal Highness, Prince Augustus Frederick, was the

sixth, son of his late Majesty Geo. 3; in 1793 he went to Rome, and on the 4th of April in that year intermarried with Lady Augusta Murray, the second daughter of the Earl and Countess of Dunmore; that marriage was celebrated by a clergyman of the church of England, in a form as nearly as could be according to the rites of the church of England, an English Prayer-book being used upon the occasion; and it was contracted and attested by two papers [11-Clark & Finnelly-87] signed by his Royal Highness and by Lady Augusta, which papers were in the following terms: -

"As this paper is to contain the mutual promise of marriage between Augustus Frederick and Augusta Murray, our mutual names must be put here by us both, and kept in my possession; it is a promise neither of us can break, and is made before God our Creator and all-merciful Father."

"On my knees before God our Creator, I Augustus Frederick promise thee Augusta Murray, and swear upon the Bible, as I hope for salvation in the world to come, that I will take thee Augusta Murray for my wife; for better for worse; for richer for poorer; in sickness and in health; to love and to cherish till death us do part; to love but thee only, and none other; and may God forget me if I ever forget thee. The Lord's name be praised! So bless me! So bless us, O God! And

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with my handwriting do I Augustus Frederick this sign, March the 21st, 1793, at
Rome; and put my seal to it, and my name.
(L. S.)
(Completed at Rome, April 4th, 1793.)
Augustus Frederick."

"On my knees before God my Creator, I Augusta, Murray promise and swear upon the Bible, as I hope for salvation in the world to come, to take thee Augustus Frederick for my husband; for better for worse; for richer for poorer; in sickness and in health; to love and to cherish till death us do part. So bless my God, and
sign this Augusta Murray."

There were duplicates of these papers; and in the first of them, the words " Married, April 4th, 1793, [11-Clark & Finnelly-88] Rome, 7 o' clock at night," were, introduced in the place of the words " Completed at Rome, April 4th, 1793." The latter words were added on the day thus mentioned in the handwriting of his Royal Highness.

The petitioner's case further stated that the parties were again regularly married in England, and that the petitioner was born in the parish of St. Marylebone, in the county of Middlesex, on the 13th January 1794; and the petitioner was the only male issue, of the marriage: - That by letters patent, dated on the 27th November 1801, his Royal Highness, Prince Augustus Frederick, was created a Peer of the realm, by the titles of Baron Arklow, Earl of Inverness, and Duke of Sussex, with limitation to the heirs male of his body; and that his Royal Highness afterwards sat and voted in Parliament, and died on the 21st. April 1843, leaving the petitioner his only son and heir male him surviving.

The Attorney-general, on the 21st August 1843, made a report to Her Majesty, in which he said, "It appears to me, on the testimony laid before me, that it is established that the contracts of marriage above set forth were entered into by his late Royal Highness the Duke of Sussex and the Lady Augusta Murray, at Rome, on the 21st of March 1793; and I think it may be inferred that his late Royal Highness the Duke of Sussex and the Lady Augusta Murray considered that they stood in the relation of husband and wife."

He then expressed his doubts of the fact of any marriage, valid by the laws of England, having been contracted, even independently of the Royal Marriage Act (1 2 G. 3, c. 11); and declared that he was not satisfied with the correctness of certain opinions which were laid before him, stating that Act to have no binding force on parties living out of England. He [11-Clark & Finnelly-89] therefore recommended Her Majesty to refer the petition to the House of Lords. Her Majesty was pleased to adopt this recommendation; and on the 22d. of August the petition, together with the Attorney-general's report, was referred to the House of Lords, and by the House to the Lords Committees for Privileges.

At the first sitting of the Committee for Privileges, on the 7th of June 1844, the Earl of Shaftesbury in the chair, the Lord Chancellor, Lord Brougham, Lord Denman, Lord Cottenham, Lord Langdale,-Lord Campbell, and other Lords being present; and Lord Chief Justice Tindal, Lord Chief Baron Pollock, and Justices Patteson, Williams, Coltman and Cresswell, and Baron Parke, attending;

Sir T. Wilde (Mr. Erle, and Mr. James Wilde were with him) opened the case for the petitioner: - There, will be no difficulty in this case in proving the petitioner to be the only son of the late, Duke of Sussex. The fact of the marriage will also be easily established, end the only question will be as to the validity of that marriage. The marriage was a valid marriage by the laws of England, independently of the Royal Marriage Act. And it is submitted that that Act does not impeach its validity. The correspondence between the parties, both before and after the marriage (many parts of which were put in and read) proves beyond doubt that the object they had in view was marriage, and nothing else. The

Prince appeared to imagine that if married at Rome, he should, especially after he was 21, be able, notwithstanding any opposition, to have his marriage celebrated in England. It appeared that Protestants at Rome had considerable difficulty in celebrating marriages between themselves. The Roman priests could not celebrate marriages, and the laws of Rome did not recognise any marriage, except those [11-Clark & Finnelly-90] which were celebrated according to the Roman-catholic ritual. In this situation of things, the Prince had re course to the Rev. Mr. Gunn, an ordained minister of the church of England, who happened to be at that time, in Rome for the purpose of discovering and collecting

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the Stuart papers. After long-repeated importunities, Mr. Gunn consented to celebrate the marriage; and the fact would be placed beyond all doubt that he did celebrate it according to the rubric of the church of England, with every form that circumstances enabled him to employ, in order to give it force and validity. This marriage is therefore, a valid marriage by the laws of England, as a foreign marriage made at a place where no other form of marriage was open to the parties. Or, if denied to be a marriage valid, according to the laws of England, as strictly a marriage celebrated according to the General Marriage Act, then it is valid as a contract of present relation of husband and wife, and may be considered as if made between two parties in a desert island in the ocean, where no laws existed, and where the solemn and declared intentions of the parties must, from the necessity of the case, constitute the marriage: - or as made at a place where only one form of marriage was open to the parties, and they married by that form; in which case their marriage would undoubtedly be good according to the laws of England.

The question upon the statute then arises: - assuming the marriage to be perfectly valid and unobjectionable by English or Roman law, the question arises whether it is avoided by reason of the Act of Parliament commonly known as the Royal Marriage Act [12 Geo. 3, c. 11], one of the parties to the marriage being a descendant of Geo. 2? In order to try the effect of that circumstance and the construction of the Act of Parliament, the marriage must be assumed to be valid in [11-Clark & Finnelly-91] other respects. The material clause in that Act is in these terms--

"That no descendant of the body of his late Majesty King George the 2d, male or female (other than the issue of Princesses who have married or may hereafter marry into foreign families), shall be capable of contracting matrimony, without the previous consent of his Majesty, his heirs or successors, signified " under the Great Seal, and declared in Council (which consent, to preserve the memory thereof, is hereby directed to be set out in the licence and register of marriage, and to be entered in the books of the Privy Council); and that every marriage or matrimonial contract of any such descendant, without such consent first had and obtained, shall be null and void to all intents and purposes whatsoever."

Is this Act confined to marriages contracted in England, or in British territories, or does it affect to enact prohibitions on British subjects marrying anywhere and under any forms of law? It cannot have this latter operation. Its obligations and prohibitions must be confined to marriages contracted within British territories. There are two cases on this subject, one of which is directly in point: - Swift v Swift (3 Knapp, 257) is a case where the parties were married in Rome. There, both parties were British subjects and Protestants, and by the law of Rome no Protestant religious ceremony could be celebrated between them. Their marriage was, therefore, not made according to the English law. Nor by our law would it have been good in another view of the matter; for in order to get married they had fraudulently pretended to be Roman-catholics, and had made profession of that faith, and had been married according to the form of [11-Clark & Finnelly-92] the Roman ritual. The Arches Court, on the ground of the fraud, had declared the marriage invalid (3 Knapp, 303); but the Privy Council reversed that decision, as neither party had been deceived as to the person with whom the contract was made, and as the marriage had been good by the forms of the Roman law. The next case is that of Lord Cloncurry (Cruise on Dignities, evi. s. 85, p. 276 (ed. 1823). The name of the case is not mentioned). There a divorce Bill was introduced into the Legislature, and it became necessary to ascertain whether there had been a valid marriage. Both the parties there were Protestants. They had been at Rome; and not being able, as Protestants, to have the marriage ceremony performed according to the law of the place, they were married by an English priest, as the parties have been in the present instance. Men the Bill was argued at the bar of this House, Lord Eldon desired to know what was the law at Rome as to the marriages of Protestants. Witnesses were examined, and it was proved that by the law of Rome, and the effect of the Council of Trent, Protestants could not be married at Rome; it was also proved that these parties had been married perverba de praesenti, in the presence of an English clergyman, and this House held the marriage to be valid. These two cases are decisive of the present. [Lord Brougham: - Lord Cloncurry's case does not much affect the matter; for that was a divorce Bill, where but slender proof of marriage is required, as the marriage is set

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up merely to be knocked down again.]-Suppose that the husband there had been a descendant of Geo. 2, that would not have rendered the marriage invalid; the Royal Marriage Act creates no incapacity [12 Geo. 3, c. 1.].

The General Marriage Act has always been treated by the Courts as one creating disabilities and as [11-Clark & Finnelly-93] restricting the exercise of natural rights, and therefore requiring to be strictly construed. That objection applies with infinitely greater force to the Royal Marriage Act. The first objection to the Act arises on its vague and indefinite character. It affects to apply to the descendants of Geo. 2. Does it apply to them for a restricted and limited period only, or for ever? If the latter, how many persons are subject to its operation? And are they subject to it from their birth, or do they become so only under particular circumstances, and at particular periods of their lives? Are all the remote descendants of Geo. 2, who and whose parents may have lived abroad, away from the operation of the laws of this country, and perhaps ignorant of their existence, are they all to be subjected to the provisions of this Act, and to be incapable of marrying except with the consent of the Sovereign of this country? No one can pretend that an English statute can have such a universal effect. A statute creating an incapacity must, according to the rules of English law, apply to some definite time, or place, or person. This statute, though creating an-incapacity, does nothing of the sort. To give effect to such a statute, all the ordinary rules of construction must be abandoned, and a course adopted hitherto unknown to the law; intention must be guessed at, and the general rules of the law violated, in order to enforce it. The Act itself excepts from its operation the issue of Princesses who have been married, or who may marry, into foreign families. This shows that it was intended to have a very restricted operation, and not to apply to all those who by the chances of events, might come to have a claim to the succession to the Crown. If the Act really had any distinctive purpose of policy, here is an abandonment [11-Clark & Finnelly-94] of it. The persons nearest the succession to the Crown, have been those, expressly excepted from its provisions. The Princess Charlotte was a Princess who married into a foreign family. By the terms of the Act her issue would be excepted from its provisions; yet she was very near the throne; and her case, therefore, affords a proof of the extraordinary inaccuracy and looseness with which the Act was drawn, and shows it rather to have been an emanation of the Royal temper at the moment, than a well-considered and well-framed piece of State legislation. The issue of Her present Majesty, had she married while a Princess, would, in like manner, have been exempt from its operation. Again, some of the provisions of the Act are incapable of execution in foreign countries. The Act requires the consent of the Sovereign signified under the Great Seal, but provides no form in which it shall be asked; limits no time within which the answer shall be given; nor affords any means by which the answer, if a negative, shall be known. While defective in all these respects it goes on to provide in the second section, that if the answer should be in the negative, the party applying for the consent may give notice to the Privy Council; yet it secures no means for showing that any answer in the negative has been given, though it makes the existence of such an answer a condition precedent to the giving notice to the Privy Council; nor does it enact that the lapse of a certain time without any answer being made to the demand, shall be treated and considered as a dissent on the part of the Crown.

The Act is open to still further objections: - besides creating an incapacity (supposing it to do so), it creates a crime. The parties offending against it are subjected to forfeiture of property and to imprisonment. [11-Clark & Finnelly-95] Mat, then, must be the rules of construction applied to such an Act? It cannot be denied that the British Parliament possesses the power to impose restrictions and disabilities and incapacities on any British subject, which shall operate on him any-where; but then the intention to do so must be clearly, plainly, and unequivocally expressed in the Act which proposes to effect such a purpose, and the Act must be so framed as to render its provisions capable of being fully carried into effect. Neither of these things can be said to be true of this Act. This rule has been applied from the earliest times to the crime of murder, and to other offences committed by British subjects beyond seas; in all of which the forms of proceeding, the extent of jurisdiction, and the means of exercising it, have been fully provided for. In all of these Acts too, the Legislature has expressly described the offence, for the punishment of

11 Clark & Finnelly 96, 8 ER p1039
which provision was thus specifically made, as an offence committed "beyond the seas." Even treason, if committed abroad, can only be tried in this country under the provisions of a special statute. Is the Royal Marriage Act [12 Geo. 3, c. 11] to receive a wider and less limited operation than the law of treason? The Legislature might have expressed such to be its intention; but it has not done so. The form of prohibition here is no higher than that which exists in many cases of civil contract; and if so, where is the instance to show that the provisions of any general enactment shall operate out of the British territory? This Act cannot be construed differently from others of the same class and kind. The

words of the Act seem to contemplate only such marriages as took place within the British territory. The details, such as they are, show this How is the consent to be indicated? Under the Great Seal not as before, [11-Clark & Finnelly-96] under the Privy Seal; but under the Great Seal, and declared in Council; and in order to preserve the memory thereof, the consent thus signified is to be set out in the licence and register of marriage. What licence and register? No such things exist abroad, and all these provisions are, therefore, inapplicable, to the cases of foreign marriages. It may be said that these matters are merely directory and not essential; but they are important as showing what was the object of the Legislature, and how it was to be accomplished; and they show an object which could only be accomplished within the realm of England. It therefore follows that the provisions of the Act are only applicable to cases within the realm of England. From first to last the enacting provisions of the first clause are confined to English marriages; yet it cannot be said that that clause overlooks foreign marriages, for it deals with them by expressly excepting them from its provisions. In every respect, therefore, by the ordinary rules of construction applicable to statutes, it may be contended that the Legislature did not intend that the Act should have any operation out of England.

If these rules of construction are applied, as they ought to be to this statute, it cannot be pretended that any man would, by being present at or assisting in celebrating such marriage abroad; subject himself to the pains and penalties of the statute. Would it be impossible to frame, an indictment to meet such a case? It would not. The parties could not be tried out of the British territory. The jurisdiction, like the offence, must be local; a circumstance, of great importance in considering the construction of the Act.

How would the law stand with regard to Ireland? [11-Clark & Finnelly-97] Ireland, at the time when it was passed, was not bound by English Acts of Parliament. Suppose the marriage to be valid in Ireland, would it be valid everywhere else except here? What is the great principle of all laws on the subject of marriage? it is that a marriage good at the place, where it is contracted, shall be good everywhere. The principle of this rule is so excellent in itself, and is so universally admitted, that it is applied in other cases besides those of marriage. A contract which, for want of being executed with certain forms in England, would be absolutely void here, will, if made elsewhere, according to the law of the place where it is made, be valid though executed without any of those forms, and be enforced here. The marriage here was good at Rome; and being so, to say that it is bad here would be a departure from a universal rule of law, and that too upon an implication only, and not on an express declared authority. The argument of analogy, derived from other statutes, is fatal to the application of this statute to cases of marriages celebrated abroad. The General Marriage Act affords in that way an argument against this Act being of any force in a foreign country. The General Marriage Act declares that its provisions shall not extend to marriages beyond seas. That means the English colonies, nothing more. [Lord Brougham: - It does not even include Scotland.]-Again, the 15 Geo. 2, c. 40, declares that if any person is lunatic, that person shall not marry until the Lord Chancellor has declared that such person has recovered his sanity. Does that Act operate on British subjects out of England? It does not, and yet it is an instance of an Act of general legislation for most wise and beneficial purposes, and is wholly unrestricted by its terms. The words " not capable " will, perhaps, [11-Clark & Finnelly-98] be said to be of greater force than the phrase " shall not marry." The argument is deserving of little consideration except in cases where the general intention is clear, but where a particular expression might introduce a doubt into the matter. Again, what has been the course with Acts of Parliament relating to other matters done abroad? They

have been held of no effect unless the Acts expressly included cases occurring abroad. The " Geo. 4 and 1 Will. 4, c. 65, s. 34, declares that if any person found lunatic abroad has funds in this country, such funds shall be transferred to any foreign committee: - and in order to make that declaration effective, the Legislature passed another section, the 36th, which provided, that the powers given to the Lord Chancellor should be capable of being exercised as to all land and stock within any of the dominions, plantations, and colonies belonging to his Majesty. BY the statute 5 Geo. 4, c. 112, relating to the slave trade, where the most strict terms of prohibition were employed against the doing of certain acts, the question arose, whether acts of the kind prohibited, done out of the limits of British territory, could be made the subject of punishment upon the individual who had done them; and punishment in such a case being found impossible, the Legislature was compelled to pass a statute (the 6 and 7 Vict c. 98), declaring that the acts forbidden to be done should, if done by any British subjects, wheresoever residing, be punishable under the former statute. That statute is a distinct legislative declaration in favour of the argument now submitted to the consideration of the House.

[The learned counsel then proceeded to argue that the marriage in this case was valid in Rome, and therefore must (independently of the Royal Marriage Act [12 Geo. 3, c. 11]) be treated as valid in this country; and cited Lord Cloncurry[11-Clark & Finnelly-99] s Case (Cruise on Dignities, 276),

Pointer on Marriage (p. 290) Story's Conflict of Laws (c. v s. 118), Warrender v Warrender (ante, vol. v p. 531), Lindo v Belisario (1 Hagg. Cons. Rep. 216), Ruding v Smith (2 Hagg. Cons. Rep. 371), Lautour v Teesdale (8 Taunt. 830). These arguments are not reported, as the question put to the Judges assumed a marriage in fact, and also assumed the validity of that marriage, so far as the Royal Marriage Act was not concerned, and made the claimant's title depend entirely on the construction to be put upon that Act.]

In the course of the evidence of the marriage, a Prayer-book, produced from the papers and documents of Lady Augusta, and containing an entry proved to be in her handwriting, was tendered in evidence. The entry was as follows: - " The Prayer-book by which I was married at Rome to Prince Augustus Frederick. on the 4th day of April 1793, by the Rev. Mr ." The entry itself was without date.

Mr. Waddington, who was with the Attorney-general and Solicitor-general on behalf of the Crown, objected that the entry in this Prayer-book was not admissible for the purpose, of proving the fact to which it related.

The Lord Chancellor: - It is admissible as a declaration by one of the parties that there was a marriage, though not admissible to prove the marriage.

The Prayer-book was received, and the entry read.

A will, dated Berlin, 15th September 1799, and proved to be in the handwriting of the Prince, and sealed with the Royal arms, was tendered in evidence, [11-Clark & Finnelly-100] as a declaration made by him at the time: - it was not the will under which his executors acted.

Mr. Waddington: - This paper cannot be received in evidence, even as a declaration by the party; for it appears by the date to have been made after a suit was instituted to annul the Prince's marriage. It contains a statement of that suit, and therefore, by the decision in the Banbury Peerage Case, it is inadmissible.

Sir T. Wilde: - There never was any lis as to the fact of the marriage; and this declaration, which only states that fact, is therefore evidence. The lis only related to the legality of the marriage.

Mr. Waddington: - The paper says, " Notwithstanding a decree has passed Doctors Commons to declare my marriage unlawful and void, yet I still feel myself bound;" and then goes on to state that the writer makes the declaration contained in it for the purpose of establishing the legitimacy of his son, which had been called in question by these proceedings. This clearly falls within the ordinary rule of law against admitting declarations post litem motam.

Sir T. Wilde: - This paper is offered in proof only as a declaration of the fact of the marriage. That fact never has been questioned; the passage now read from the paper proves that. The decree never could have been passed to declare a marriage unlawful and void, if no marriage had in fact taken place. The dispute there was on the legal consequences of the marriage, which is quite a collateral matter.

Lord Brougham: - Suppose, in a jactitation suit, the question to be marriage or no

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marriage; could not those parties, one or both of them, set up this [11-Clark & Finnelly-101] very marriage at Rome to prove the affirmative of that question? If so, would not this suit, taking it to relate to the marriage at Rome, constitute a lis mota.

The Lord Chancellor: - Does that suit relate to anything but the marriage in England? Do you mean to produce the decree thus referred to?

Sir T. Wilde: - I do not.

The Lord Chancellor: - Then, for anything that appears to the contrary, it may relate to the marriage at Rome.

Sir T. Wilde: - Even if it does so, it cannot relate to the marriage in fact, but to the question whether that marriage was operative in law.

Mr. Waddington: - The suit in which this decree was made, was a suit for nullity of marriage, instituted at the instance of the King.

Lord Campbell: - That shows that there was a suit in which a marriage was in question. The natural inference is that this very marriage was the marriage in controversy. Then this declaration is one made after a sentence of the Ecclesiastical Court, and the sentence may have proceeded on the ground that there was no marriage at Rome.

Lord Brougham: - The document shows that there has been a lis; and my opinion is that that makes it impossible for us to receive this document till we see what that lis really was. The argument that the decree only related to the lawfulness of the marriage, and not to the fact of a marriage, cannot be sustained, for the alleged marriage might have been only a pretended marriage.

[11-Clark & Finnelly-102] The Lord Chancellor: - The form of the judgment is " the marriage or pretended marriage." At the present moment this document cannot be admitted as evidence without further explanation.

Lord Campbell: - It would be contrary to express decisions to admit this document. We know that there was a decree respecting the validity of a marriage: - this is a declaration after that decree. Esto, that this particular marriage was not in controversy. Our receiving this declaration after such a decree, would only be giving an opportunity, one marriage having failed, to set up another. All the facts now relied on might have been in evidence in that suit.

Lord Denman: - I have, got the report of the case in 2 Addams [2 Addams 400 n.] The libel states that on the 4th of April,

" A marriage, or rather a show or effigy of marriage, between his said Royal Highness Prince Augustus Frederick and the said Lady Augusta Murray, was in fact had and solemnised, or pretended to have been had and solemnised, at the house of the said Right honourable Charlotte, Countess of Dunmore, at the said city of Rome, on the 4th day of April 1793."

The Lord Chancellor: - A declaration of a marriage is only admissible in evidence, as a declaration of a legal marriage. The legality of it had been in controversy here. The declaration of a marriage in fact is nothing.

Lord Brougham: - The judgment is to this effect: - " In respect to the fact of marriage, or rather show or effigy of a marriage pleaded in the said libel to have been had and solemnised, or pretended to have been had and solemnised, at the house of the Right honourable Charlotte, Countess of Dunmore, in the [11-Clark & Finnelly-103] city of Rome, on the 4th day of April 1793, there is not sufficient proof by witnesses that any such fact of marriage, or rather show or effigy of a marriage, was in any manner had or solemnised at the said city of Rome, between his said Royal Highness Prince Augustus Frederick and the Right honourable Lady Augusta Murray, spinster, the parties cited in this cause; but that if any such marriage, or rather show or effigy of a marriage, was in fact had or solemnised at the said city of Rome between the said parties, the said pretended marriage was and is absolutely null and void to all intents and purposes in law whatsoever."

This judgment distinctly declares, that there is not sufficient to prove the fact of the marriage, but that if it existed in fact, it was null and void. This surely shows that the Roman marriage was in issue.

Lord Campbell: - So that the declaration in the will would be in contradiction to the judgment of a Court. It cannot be received.

Another will of a subsequent date was also tendered, but it was objected to on the same ground, and both the wills were rejected.

Dr. Lushington was afterwards called to state in what manner his Royal Highness

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had uniformly spoken of the claimant in conversation; but this evidence was rejected on the same ground.

The declarations of Mr. Gunn, made to his son, with respect to the marriage, were proposed to be proved in evidence by his son, on the ground that they were the declarations of an individual who knew the facts, who was not interested in misrepresenting them, who had an interest in being silent respecting them, and whose statements, he being dead, were therefore admissible in evidence.

[11-Clark & Finnelly-104] Sir T. Wilde and Mr. Erle, in support of the evidence tendered: - Mr. Gunn has been proved to have been at Rome, at the period in question. By the letters of the Prince and of Lady Augusta it is proved that they proposed to be married, and were married by a Mr. Gunn, who is shown to be the person whose declarations are now tendered to the Committee. He, had a perfect knowledge of the facts, and was not interested in misrepresenting them, but the contrary. The question to which these declarations relate rests partly on an Act of Parliament, which contains a penal clause. There have been proceedings in Chancery; Mr. Gunn was called as a witness, and interrogatories were put to him; he demurred to them on the ground that if he answered them he might subject himself to penalties under the 12 Geo. 3, c. 11. This shows that he not only was not interested in misrepresenting facts to support the marriage, but believed himself to have an interest the other way. In Higham v Ridgway (10 East, 109), where the question of the date of a birth arose, a paper was offered in evidence which purported to contain an entry of a charge of attendance on the mother, and at the bottom of the charge was written a statement that it had been paid. The entry was offered in evidence for proof not only of the fact of the birth, but of the time at which it took place: - and it was received in evidence upon two grounds, either of which would have been sufficient. The first was, that it was the entry of an act of which the man making it had perfect knowledge, and which he had no interest to misrepresent. Further than this, the book contained an entry of payment, which was against the interest of him who made it, showing that the charge which he [11-Clark & Finnelly-105] had made for attendance had been discharged. The necessity of the case renders SUC4 evidence admissible. Mr. Justice Le Blanc, in considering the question, said (10 East, 112): -

"On inquiring into the truth of facts which happened a long time ago, the Courts have varied from the strict rules of evidence applicable to facts of the same description happening in modern times, because of the difficulty or impossibility, by lapse of time, of proving those facts in the ordinary way by living witnesses. On that principle stands the evidence, in cases of pedigree, of declarations of members of the family who are dead, or of monumental inscriptions, or of entries made by them in family Bibles. The like evidence has been admitted in other cases where the Court was satisfied that the person whose written entry or hearsay was offered in evidence had no interest in falsifying the fact, but on the contrary had an interest against his declaration or written entry here the entries were made by a person who so far from having any interest to make them, had an interest the other way; and such entries against the interest of the parties making them are clearly evidence of the fact stated, on the authority of Warren v Greenville (2 Str. 1129), and of all those cases where the books of receivers have been admitted."

And Mr. Justice Bayley, adopting the same line of argument, said: -

"The principle to be drawn from all the cases is that if a person has peculiar means of knowing a fact, and makes a declaration of that fact, which is against his interest, it is clearly evidence after his death, if he could have been examined to it in his lifetime."

Attention was called in Gleadow v Atkins (1 Cro and Mee. 410) to this last expression of Mr. Justice Bayley, and that [11-Clark & Finnelly-106] learned Judge, who had then taken his seat in the Court of Exchequer, disavowed the opinion as to restricting the production of the entries by the circumstance of the writer of them, if alive, being capable of being examined. In other respects he adhered to his original opinion. These authorities show that there is no necessity that the entry should be made in the discharge of a duty, nor that he should be able to be examined in his lifetime. Standen v Standen (1 Peake's N. P. Rep. 45) is a strong authority to the same effect. There a declaration by a clergyman, made to the supposed husband, that a friend of the wife's had forbid the banns the second time they were published, was held admissible, not as proof of the fact, but as evidence that the clergyman had married the parties without the due publication of banns. That declaration could only have been admissible on the ground that it was a declaration against

11 Clark & Finnelly 107, 8 ER p1043

the interest of the party who made it. Mr. Justice Bayley distinctly states (Gleadow v Atkins, 1 Cro and Mee. 424) that peculiar knowledge, and no interest to misrepresent, will render declarations admissible, in evidence after the death of the parties who make them; and that was the abstract he had made of the case of Roe d. Brune v Rawlings (7 East, 279). It is true that in Higham v Ridgway the parties had the benefit of contending not that the entry which was sought to be read was against the interest of the party making it, but that what he then wrote became admissible by the subsequent entry, which was in opposition to his own interest. It may now be considered to be the rule that the fact of the entry being against the party's interest, will make it admissible. In the present case it is surmised that Mr. Gunn committed an unlawful act in celebrating the marriage in question.[11-Clark & Finnelly-107] It would, therefore, have been against his interest to admit that he had been a party to an illegal transaction, and in consequence of that belief he refused to give his evidence in Chancery. [The Lord Chancellor: - But in the Berkeley Peerage Case [H.L.C.] it was decided that the mere, fact of a party not having an interest, did not make a paper written by him evidence.]-Here it is stronger; it is against his interest.

Lord Campbell: - Your present argument is opposed to your argument on the Marriage Act; for in that you contended that Mr. Gunn had nothing to fear, as what he did was not forbidden by law.

Sir T. Wilde: - But if he believed that he had offended against the law, that belief was sufficient; his belief need not be well founded. The circumstances of the Berkeley Case are materially different from those of the present. This is the case of a person making a declaration when he believed it was his interest to suppress, not to make, that declaration. The necessity of the case would justify the admission of this evidence, and the interest which the law considers is not confined to pecuniary interest. If it is established that in the mind of the deceased party this declaration was contrary to his interest, and if it is further shown that he had the means of knowledge, and had no motive to misrepresent what he knew, his declaration is admissible in evidence. A verbal statement of a party, made contrary to his own interest, is always receivable in evidence. A person in occupation of an estate, is assumed primâ facie to be the owner in fee-simple, but the admission of such a person that he holds a less estate, though made by parol, may be received to cut down his interest. It may be so received because it is against his interest to make [11-Clark & Finnelly-108] the admission. The principle of law is clear, and it becomes more distinctly applicable when a question of fact, ascertainable a few years since by other evidence, has become difficult of proof by the deaths of parties who might otherwise have been called as witnesses. A dying declaration is admissible because the person who makes it believes himself to be in extremis, and is supposed to have no motive to misrepresent, but every inducement to tell the truth.

Lord Denman: - There must be a real danger of death at the time when the declaration is made.

Mr. Erle: - A man is protected from answering when he believes that his answers may subject him to a prosecution. [Lord Brougham: - It does not follow, when a man is protected from answering because he believes himself to be in danger, that therefore his declarations on the matter respecting which he has been protected from answering in his lifetime, should after his death become admissible in evidence.]-But the existence of this protection furnishes the argument of analogy, that the fear of danger is a matter recognised by the law as affecting the testimony of a witness. The fact that he fears a prosecution will of itself protect him from being forced to answer; and his declarations made when that fear might be supposed to induce him to suppress them, are for the same reason admissible in evidence.

The Lord Chancellor: - This question has been put upon two grounds. It is contended in the first place, that as Mr. Gunn might have stood indifferent on this occasion, as he had no interest and as he knew the facts, he being dead, his declarations are receivable in evidence. That is a position which cannot be maintained in this House; for in the Berkeley Peerage [11-Clark & Finnelly-109] Case that point was expressly decided the other way, on reference, to the Judges.* The clergyman there was dead;

11 Clark & Finnelly 110, 8 ER p1044

his declarations were offered in evidence, as he had performed what was stated to be the marriage; he was indifferent in point of interest. The question of the admissibility of his evidence was put to the Judges, and they were unanimously of opinion that it could not be received. So far as this House is concerned, we cannot again open that question, but must consider that decision of it as final.

The next ground of argument is that in all the [11-Clark & Finnelly-110] cases where the party has known the facts and is dead, and has made declarations, and these declarations are against his interest, and would if he had been living subject him to a prosecution, such declarations are receivable in evidence. That is the broad and general proposition. That proposition cannot be sustained: - let us try it by instances ordinarily occurring. A. is indicted for murder; B. who is dead, made while living a declaration that he was present at the murder: - that declaration is against his own interest, and would, had he lived, have subjected him to a prosecution. It is in principle the very case supposed in the argument, and it is not possible to say that such declaration would have been receivable in evidence. Again, suppose the Duke of Sussex had been put upon his trial under the Royal Marriage Act [12 Geo. 3, c. 11], for contracting this marriage, is it possible to maintain that Mr. Gunn's declarations would have been receivable in evidence against him? It is sufficient to state these instances, to show that the proposition of the learned counsel cannot be maintained. It is not true that the declarations of deceased persons are in all circumstances receivable in evidence, when in some way or other they might injuriously affect the interest of the party making them. Nor is it true, that because, while living, a party would be excused from answering as to certain facts, his declarations as to those facts become evidence after his death. These are not correlative nor corresponding purposes. Besides, the case is not here, what for the purposes of this argument it is represented to be First, Mr. Gunn is said not to have been liable to prosecution. Then these declarations were made to his own son; and in so making them, it cannot be presumed that he would have exposed himself to prosecution, or that he made them under any [11-Clark & Finnelly-111] belief that he should do so. These two circumstances take away the main grounds on which the argument for the admission of these declarations has been rested. On no ground, therefore, can these declarations be in my opinion, received in evidence.

Lord Brougham: - I so Entirety agree with my noble and learned friend, that I need scarcely trouble your Lordships further than to express my concurrence in

11 Clark & Finnelly 112, 8 ER p1045

what has been expressed in so luminous and convincing a manner. The case of Higham v Ridgway [10 East, 109] declares the law on the point at issue. The more we look at that case, the more clearly must we come to two, conclusions. In the first place we must see that the evidence there was admitted, not because the subject-matter of the declaration was within the peculiar knowledge of the party making the declaration, but that it was a declaration made against an interest of a very specific nature, viz. a pecuniary interest. I may further say, that one of the learned Judges who is now present to assist your Lordships, I mean Mr. Justice Williams, was a counsel in that very case, and argued it with Mr. Serjeant Manley in 1808, against the admission of the evidence; and he remembers perfectly well that the evidence was received on the express and specific ground that it was an entry against the pecuniary interest of the party. Another conclusion to which we must come is that considering the nature and tendencies of such evidence unless properly restricted, we ought to be careful and cautious of extending the rule as laid down in the case of Higham v Ridgway, beyond the limits settled by that case. To say, if a man should confess a felony for which he would be liable to prosecution, that therefore, the

instant the grave closes over him, [11-Clark & Finnelly-112] all that was said by him is to be taken as evidence in every action and prosecution against another person, is one of the most monstrous and untenable, propositions that can be advanced. Lord Kenyon never could have entertained the opinion or held the doctrine imputed to him in the case of Standen v Standen (1 Peake's N. P. 45). The law in Higham v Ridgway (10 East, 109) has been carried far enough, although not too far. The rule, as understood now, is that the only declarations of deceased persons receivable in evidence, are those made against the proprietary or pecuniary interests of the party making them, when the subject-matter of such declarations is within the peculiar knowledge of the party so making them.

Lord Denman: - I entirely agree with what has fallen from my noble, and learned friends. I take the rule in Higham v Ridgway to be as my noble and learned friend has just stated it. With regard to declarations made by persons in extremis, supposing all necessary matters concurred, such as actual danger, death following it, and a full apprehension, at the time, of the danger and of death, such declarations can be received in evidence; but all these things must concur to render such declarations admissible. Such evidence, however, ought to be received with caution, because it is subject to no cross-examination. As to the case of Standen v Standen, I agree with my noble and, learned friend, that it is doubtful whether Lord Kenyon ever could have admitted the evidence in the way there described; but even if he did, it must he recollected that that was an issue from the Court of Chancery, in the trial of which the rules of evidence are sometimes relaxed, as the whole proceeding [11-Clark & Finnelly-113] is one simply for the information of that Court. The witness there came to bastardise his own issue; he was discredited and the verdict was against him. It never therefore, became necessary to discuss the propriety of what had been done: - but that case has never since been acted on, and to me it seems to involve, a very dangerous principle of law.

Lord Cottenham: - I beg simply to express my concurrence, in what has already been said by the noble and learned Lords who have preceded me.

Lord Campbell: - By the law of England the declarations of deceased persons are not generally admissible, unless they are against the pecuniary interest of the party making them. There are two exceptions: - first, where a declaration by word of mouth or by writing is made in the course of the business of the individual making it, there it may be received in evidence, though it is not against his interest; Doe d. Patteshall v Turford (3 Barn and Ad. 890). The service of a notice may thus be proved; and, in like manner, an entry by a notary's clerk that he had presented a bill, for that is in the ordinary discharge of his duty. But as to the point of interest, I-have always understood the rule to be that the declaration, to be admissible, must have, been one which was contrary to the interests of the party making it, in a pecuniary point of view; and, with the exception of Standen v Standen, I do not know any case which appears to break in upon that principle. I think it would lead to most inconvenient consequences, both to individuals and to the public, if we were to say that the apprehension of a criminal prosecution was [11-Clark & Finnelly-114] an interest which ought to let in such declarations in evidence. But even if such a rule did

11 Clark & Finnelly 115, 8 ER p1046

exist, it would not permit the learned counsel here to bring in the statements of Mr. Gunn, for how are your Lordships to know what state Mr. Gunn's mind was in when he made the declarations? At that time of his conversation with his son, he might have entertained a very different belief from that which he laboured under when he demurred to the bill in Chancery, and refused to answer the interrogatories put to him there. He might have believed that the marriage having been celebrated abroad, the provisions of the Royal Marriage Act did not extend to it, and that he was in no danger whatever from what he had done.

Lord Langdale: - My Lords, lest it should be supposed that there is any difference of opinion on this point, I beg to say that I fully concur with the noble and learned Lords who have preceded me.

The declarations tendered were rejected.

The Right Rev. Nicholas Wiseman, D.D., having been called, and having begun to give his evidence on the law at Rome on the subject of marriage, referred, doing so, to a work which was lying by him. This was noticed.

Lord Brougham (to the Counsel): - You had better state to the witness that he may refresh his recollection by referring to authorities on the matter of law to which his evidence is addressed.

The Lord Chancellor: - Do so. The witness may thus correct and confirm his recollection of the law, though he is the person to tell us what it is

Lord. Campbell: - The most authoritative form of [11-Clark & Finnelly-115] getting at foreign law, is to have the book which lays down the law. Thus we have had the Code Napoleon in our Courts. It is better than to examine a witness, whose memory may be defective, and who may have a bias influencing his mind upon the la.

Lord Brougham: - My opinion entirely concurs with that of the Lord Chancellor. The witness may refer to the sources of his knowledge; but it is perfectly clear that the proper mode of proving a foreign law is not by showing to the House the book of the law; for the House has not organs to know and to deal with the text of that law, and therefore requires the assistance of a lawyer who knows how to interpret it. If the Code Napoleon was before a French Court, that Court would know how to deal with and construe, its provisions; but in England we have no such knowledge, and the English Judges must therefore have the assistance of foreign lawyers. This was fully considered in Dalrymple v Dalrymple (2 Hagg. Cons. Rep. 54), in which the opinion of the Scotch lawyers was taken as a matter of fact, they being examined upon oath. In those opinions they referred to Scotch statutes and Scotch law-books. It was agreed on all hands, that that which was there in evidence were not the mere statements of foreign text-writers, but the opinions of skilful and scientific men who were examined on oath.

Lord Denman: - There does not appear to be in fact, any real difference of opinion upon this point. There is no question raised here as to any exclusive mode of getting at this evidence, for we have both the materials of knowledge offered to us. We have [11-Clark & Finnelly-116] the witness, and he states the law, which he says is correctly laid down in these books. The books are produced, but the witness describes them as authoritative and explains them by his knowledge of the actual practice of the law. A skilful and scientific man must state, what the law is but may refer to books and statutes to assist him in doing so. That was decided, after full argument, on Friday last, in the Court of Queen's Bench (Baron de Bode's Case, tried at bar in the Court of Queen's Bench, 20 June, 1844; not yet reported [3 H.L.C. 449]). There was a difference of opinion, but the majority of the Judges clearly held, on an examination of all the cases and after full discussion, that proof of the law itself, in a case of foreign law, could not be taken from the book of the law, but from the witness who described the law. If the witness says, " I know the law, and this book truly states the law," then you have the authority of the witness and of the book. You may have to open the question on the knowledge or means of knowledge of the witness, and other witnesses may give a different interpretation to the same matter, in which case you must decide as well as you can on the conflicting testimony: - but you must take the evidence from the witnesses.

Lord Campbell: - I entirely concur with the law as laid down by the noble and learned Lord who has just spoken. The foreign law is a matter of fact to be proved by evidence. You call witnesses to prove that fact; you ask the witness what the law

11 Clark & Finnelly 117, 8 ER p1047

is He may from his recollection, or on producing and referring tot books, say what it is or that it is found correctly stated in such a book. He may here produce the book, and say that that is according to the law of [11-Clark & Finnelly-117] Rome. So likewise he may take the book to refresh his memory.

Lord Langdale: - The question here is how a witness as to what is foreign law, is to be examined; in what form and manner he is to give his testimony. Foreign law is in the Courts of this country, a matter of fact. A witness more or less skilled in it, is called in to depose to it. He may state what it is from his own knowledge, or assist his own knowledge by reference, to books and authorities that are within his reach: - he may refer to textbooks, or to books of decisions, and so render his knowledge more accurate than before.

The witness went on to state what was the law of Rome, and what the practice of the Roman Courts, on the subjects of marriage generally, and of marriages between Protestants in particular (this part of the evidence is not reported, as the question put to the Judges rendered the consideration of it unnecessary; see however appendix 111 Cl. and F.] 764).

The Right Rev. Nicholas Wiseman, D.D., was then recalled, and the following examination took place: -

I am a Roman-catholic Bishop.

I am coadjutor to the Bishop, who is Vicar-apostolic of the central district of England at present.

I preside over the Roman-catholic college at Oscot. I resided at Rome from 1818 till 1840.

I was the Superior of the English college for several years during that period.

In the event of any questions arising in England relating to the validity of Catholic marriages, the Vicars-apostolic in England have the same jurisdiction in respect of such cases which any Bishop would have upon the Continent.

[11-Clark & Finnelly-118] I have had as fair an opportunity as might be expected to become acquainted with the practice and doctrine upon the subject; but if the office to which the question refers is my present office, I should say that it would be a n important part of my duty at present, to make myself acquainted with the law upon the subject.

In my office as coadjutor.

I have held that office in England four years.

I came to this country immediately from the office of Superior of the English college at Rome.

I am aware of the law that prevails at Rome, usually described as the Council of Trent.

The law at Rome by which the marriages of Roman-catholics are regulated, is the law of the Council of Trent, which declares that a marriage, to be valid, must be in the presence of the parish priest and two witnesses.

There has been no regulation upon the subject of the marriages of Protestants, and I could not refer to any decree which went to define anything relating to the marriages of Protestants in Rome.

There are authorised publications of the Council of Trent, which are acted upon as authorities by the judicial tribunals at Rome.

The canons of that council of course are perfectly known, in the same way that any other judicial decisions or any public enactments are known. The canon was published, and its decrees communicated officially to the whole church; and any edition of it that might be considered as coming from an authorised press, as from the one in Rome, would certainly be admitted as sufficient evidence.

In answer to questions by the Attorney-general, the witness so id,-I have been a member of one of the [11-Clark & Finnelly-119] ecclesiastical tribunals, but not one into which such cases as this would come. I have had no personal experience of the administration of the law at Rome.

The Attorney-general submitted that sufficient foundation had not been laid for receiving this evidence, by proving that the witness was qualified, from his office or means of knowledge, to give evidence upon this subject.

The Committee desired that he might be further examined on this subject.

The witness then underwent the following examination: -

11 Clark & Finnelly 120, 8 ER p1048

I have, studied the canon law.

I have not gone through a regular course of canon law; but for the discharge of my duties it has been of course necessary that I should make myself acquainted with the canon law upon all those points upon which it is applicable to cases that may arise; and among others, of course, to matrimonial cases, so, as to form my own opinion upon the subject.

All that relates to matrimonial cases would come, of course, before me in my present office. A case might arise in which two Protestants, having been married abroad, came into this country, and became Catholics; and it would be my duty to decide whether they should be separated or re-married, or whether I should hold their marriage valid.

In disposing of those cases which come as it were officially before me here as coadjutor to the Bishop for the central division of England, I should govern myself by the canon law, as far as it is applicable, to cases of that kind. I should do so by the canon law of Rome.

To enable me, to perform the duties of the office, I hold. I have studied the canon law respecting marriage [11-Clark & Finnelly-120] which prevails now at Rome, and govern myself by that law in my decisions.

The Attorney-general: - Surely the decree of the Council of Trent is no part of the law you ever administer here, is it?

That decree is not.

That decree is a portion of the law of Rome is it not? Certainly.

And therefore the canon law you administer here is not the same law of marriage as is administered at Rome?

It is the same law; because that very decree would come under my notice, as in the case I have stated, where I should be obliged to decide upon the law of Rome or other Catholic countries, in case persons married, in those countries, Protestants who came, into my jurisdiction. It would be my duty to decide with respect to them, and the law which would decide their case would be of course, the law as administered in other countries.

Suppose a question as to the validity of a marriage between Roman-catholics in Ireland, where that decree, of the Council of Trent has been received, should come before me, I should be guided by the decree of the Council of Trent in deciding upon the validity of that marriage.

NO instances have ever come before me of a marriage of two, Protestants at Rome, nor of the marriage of two Protestants in any Catholic, country where the decree of the Council of Trent was received as law.

I do not know any actual instance in which a marriage, of Protestants has come before me, where that marriage has been solemnised according to the Protestant form in a Catholic country in which the Council of Trent has been received.

[11-Clark & Finnelly-121] I do not know any decision with respect to Protestant marriages by the tribunals at Rome.

All the higher tribunals there, are in the hands, of ecclesiastics, entirely.

I have not directed my attention expressly to prepare, myself for those higher offices.

I could not say that I have gone, through a legal education.

I have gone through the studies usual for ecclesiastics, but not usual for ecclesiastical lawyers.

I should not say that I have gone, through such a course, of study as would qualify me to be a Judge in the ecclesiastical tribunals; because, it is necessary to take, a degree of doctor of laws, and to go through a full course, of civil ecclesiastical law for the purpose, and I have not done. that.

There is a tribunal called the Penitentiary, at Rome.

It consists of a board of Cardinals, with their officers, whose duty it is to examine into cases connected with crimes and guilt of different sorts.

A matrimonial question-might come, before me in my official capacity as coadjutor of the Bishop in this form: - I might have to decide) whether, for example, the marriage, was valid or not; for instance, if there had been a canonical or an ecclesiastical impediment, which made the marriage void ab initio, it would be my duty to decide upon it.

11 Clark & Finnelly 122, 8 ER p1049

I should decide for the purpose of separation or re-marrying. I should decide in such a case pro salute animæ.

Merely with a spiritual view.

The validity or invalidity of a marriage would not come before me in my spiritual capacity with a view to censure or penances which I might impose upon [11-Clark & Finnelly-122] the parties alone, for there might be no penance and no censure; but simply to set it right with respect to the spiritual consequences.

The validity of 9, Protestant marriage, could never come before me except with a view of the parties becoming Catholics afterwards.

The question of marriage is an ecclesiastical question decided by the ecclesiastical law at Rome.

My duties led me into communication with the ecclesiastical authorities of Rome. My decision upon the question of marriage or no marriage, which is an ecclesiastical question, would be of authority at Rome if it was unappealed from.

If I decided a case here in England upon a question of marriage, that decision would have weight in a Roman tribunal.

I do not presume that I have means of knowing the law upon this subject more than any other learned Roman-catholic ecclesiastic. For example: - as to this question I have considered it myself; I have looked into the authorities, and I have conferred with many persons concerning it, and I have formed my judgment from those various sources, as I should upon any other point upon which I should be called upon to exercise a practical judgment.

It has been part of my duty and my object to acquaint myself with the state of the ecclesiastical law at Rome upon the subject of marriage.

I have studied for that purpose.

I have been appointed an ecclesiastical Judge in this country by the Court of Rome, in Matters relating to ecclesiastical jurisdiction. I have been appointed as any other Bishop or Vicar-general might be and no further.

There is not any ecclesiastical authority in this [11-Clark & Finnelly-123] country to decide upon, the subject of marriages, except the Catholic Bishops.

The persons holding that office are generally the authorities which have jurisdiction throughout Catholic countries to decide upon questions of marriage.

That is matrimonial cases, as far as the canon law and ecclesiastical law affect them, belong to the jurisdiction of the Bishops.

I am one of those Bishops.

I never gave lectures upon ecclesiastical law at Rome.

I have filled the office of Bishop in this country for four years.

The canon law at Rome governs both temporal and ecclesiastical law.

I have had no practical experience, either as an Advocate or as a Judge, in any Court at Rome.

Sir T. Wilde and Mr. Erle, in support of the witness's admissibility. This witness stands in the situation of a person who ought to be received to give evidence on this subject. It never has been laid down that the only individuals competent to give evidence upon foreign law are those who are professionally qualified to practise. Even persons engaged in trade have been received to prove foreign law. On this question of marriage, the highest authority is not, in Rome, vested in professed lawyers. The witness here has studied at Rome as an ecclesiastic; he became head of the university there. He is now a Roman-catholic Bishop, in this country, charged with the duty of deciding on questions of marriage, whether they are regular or not, or are ab initio void; and his decisions on this matter would be received as authoritative at Rome. Legal advocates are never promoted to the office of [11-Clark &

Finnelly-124] Bishop; but the authorities at Rome say that the Bishop is the person to decide on the question of marriage. The person promoted to that office is by the laws of Rome, considered best fitted to decide on that question according to those laws. The evidence of a man who has studied abroad has been taken on such a subject. In Lord Cloncurry's Case a single priest was examined. If a barrister or advocate can alone be examined on this matter, then a man who had been for 25 years Attorney-general in some of our colonies (where that office is not necessarily filled by a barrister), could not be heard to give evidence as to the laws of the colony where he had so long held office. [Lord Brougham: - Yes, the possession of that

11 Clark & Finnelly 125, 8 ER p1050

office would give him the right. He would be peritus virtute officii.]-The cases of Lacon v Higgins (3 Stark. 178; Dowl and R. N. P.C. 38), and Ganer v Lady Lanesborough (1 Peake's N. P.C. 25), are decisive on this point. In the latter the question was as to the validity of a foreign divorce, and a Jewess was there permitted to give parol evidence of her own divorce in Leghorn, according to the custom of the Jews there.]-[Lord Brougham: - Your proposition goes to this extent; that any foreigner can be called to prove the law of a foreign country.]-[The Lord Chancellor: - In Ganer v Lady Lanesborough the woman was called to prove the custom, not the law.]-In the case of The Queen v Dent (1 Carr and Kirw. 97), where proof of the Scotch law was required, a witness was tendered, and it was objected that he was not of the legal profession; it was answered that it was not necessary that he should be of any particular profession, but that if he satisfied the Judge that he possessed in fact sufficient knowledge, he was [11-Clark & Finnelly-125] admissible as a witness; and Mr. Justice Wightman adopted that arguments and admitted the witness. It cannot be objected here that the judgment of this witness in his office can only affect the party pro salute animae; for such an objection would exclude from our Courts the testimony of Dr. Lushington as to what was the law in the Court where he presided. Here the witness exercises a judicial office, the decisions of which would be received and acted on by the highest tribunals in Rome.

The Lord Chancellor: - There are two questions here. First, whether, independently of the jurisdiction exercised by Dr. Wiseman, his evidence would be admissible. If not, then, secondly, whether that jurisdiction, whether his office here, will render, that evidence admissible. So you had better examine him with respect to the nature and duties of his office.

The witness's examination then proceeded as follows: -

The authorities in this country from the See of Rome, that have power to decide upon questions arising between Catholics respecting marriage, are the Vicars-apostolic of England.

Their authority is limited with respect to the power of dispensing in certain cases., in which they are obliged to have recourse, to the supreme authority at Rome; with the exception of those cases, the powers are the same as would be exercised in Rome itself. I ought to observe that I stated myself to be the coadjutor to the Vicar-apostolic. It might be necessary to explain in what relation I am: - I am appointed by the Holy See, with the character of Bishop, to assist the Bishop in the administration of his diocese, receiving participation in all his faculties and powers from him; [11-Clark & Finnelly-126] that participation being sanctioned, of course, to the full extent to which he gives it, by the Holy See. With respect, therefore, to matrimonial cases, I am in possession of the same administrative faculties which he exercises.

I have during my residence in this country frequently exercised that, jurisdiction.

I am guided by the ecclesiastical law of the church as applicable to this country; for instance, as to the case of clandestinity, or any matter involved, in that decree of the Council of Trent, I should have to administer for England as for a country in which that decree is not promulgated; but if cases came before me from other countries in which, it is promulgated I should have to decide according to the practical judgment I should form of the force of that canon in those countries.

Supposing a question, relating to a marriage contracted in a Catholic country, abroad should arise between two Catholics in this country, it, would become my duty and part of my jurisdiction to decide the question, whatever it might be relating to that marriage.

There are not any questions which could come under judicial decision at Rome, rotating to a marriage between two Catholics in a Catholic country, which are not within my jurisdiction, supposing the same questions to arise between two persons in this country who had so, married abroad.

The decision of any case of marriage could be fully made in this country. Cases of complication and difficulty might arise which I might think it expedient to send to Rome, for solution, in order to have the benefit of the opinion of others, but it would not be from limited jurisdiction.

[11-Clark & Finnelly-127] I might, as other Bishops, take advice from Rome, but the matter would be within my jurisdiction.

I have authority to determine whether a marriage, between two, Roman-catholics is or is not a valid marriage.

11 Clark & Finnelly 128, 8 ER p1051

I have also authority to determine whether it is a regular or an irregular marriage.

And to subject the parties to penance, if it is irregular.

If two Roman-catholics go through a ceremony of marriage which is not a marriage, I declare it to be void.

I apply to that such of the ecclesiastical laws of Rome as are in force in this country.

I apply that to marriages contracted in other countries.

The law I should apply as relating to a marriage contracted at Rome, would be the law as I consider it held at Rome.

If the marriage was contracted here, I should apply so much of the law of Rome as is applicable here; and if the marriage was contracted at Rome, I should apply to it the law of Rome, as relating to marriage.

I decide with respect to the validity of marriages; whether a marriage is a good marriage or whether it is void, whether it is a regular or irregular marriage; and I have all the jurisdiction that the Ecclesiastical Courts have in Rome.

My functions and jurisdictions are confined purely to spiritual purposes.

When I sit for the purpose of deciding these matters, I am under no obligation; I have no Court. I, of course, make it a rule of conscience to take the best advice, that I can, especially in cases, which constantly occur, of the validity of marriages, which are coming [11-Clark & Finnelly-128] before me certainly oftener than every month. I always take the advice of such theologians and persons as I can consult. The case is accurately studied; and in those books which have been referred to the authorities are collected, and I form my judgment according to them. Often the case is so simple, as to require no consideration.

The cases are not argued before me.

We have no professional lawyers, ecclesiastical advocates, in England, whom, I can consult.

I frequently send cases over to Rome.

I should consult persons, for example, who would be employed in the tribunals, or who had been employed in them, and who knew the practice of the law, and get their decisions; but some cases I should refer at once to the tribunals themselves, when, they were very complicated.

The tribunals at Rome, would respect my decisions, and act upon them.

It is the practice for Bishops holding the office I do, and deciding questions such as I refer to occasionally tot refer to Rome for advice, upon particular cases.

The law books of Rome show that that has been the course for centuries.

There are volumes of decisions made upon the demands of the Bishops for explanations.

It is the course for such cases to be submitted to and decided by the authorities at Rome, without being argued before them.

They are sent from the Bishop direct, and they decide upon his representation.

I have the power of deciding whether a marriage is valid or invalid; suppose I decide it to be invalid, the parties would be obliged to separate, unless I [11-Clark & Finnelly-129] granted a dispensation, or, if it was not within my faculty, procured it for them; but until such dispensation was granted they would have to separate.

Suppose they did not separate?

Then of course they would not be admitted to participation in the rites of the church,-to, the sacraments of the church.

Therefore my jurisdiction is entirely confined to spiritual censures, and to consequences of an ecclesiastical kind.

I should have no power to affect the property or the civil rights, of the parties in this country, except in foro conscientiae.

At this moment I do not remember a case in which I have had to inquire in this country into a marriage, which had taken place abroad.

It has never occurred to me to have to decide in this country any question upon the validity of a marriage which had taken place at Rome.

I have had a great many matrimonial cases that were Irish cases, but at this moment I cannot remember a specific case.

I have had to inquire whether at the time the marriage took place, the Council

11 Clark & Finnelly 130, 8 ER p1052

of Trent had been promulgated in that given diocese; and I have had to write to Ireland.

In cases of marriage contracted abroad, but in which the parties had come into my jurisdiction, then of course any, question of marriage comes under my consideration.

There is a superior tribunal at Rome which could call any decision of mine to account, and could re-examine the case; but, primâ facie, the tribunals there would take my decision as that of the ordinary tribunal in the case.

[11-Clark & Finnelly-130] My decision would stand till it was reversed.

I do not contemplate a case of a marriage contracted at Rome, coming under my jurisdiction in this country, and having to be) decided by me; but if it did, and the case were afterwards sent to Rome, in that case they would take my decision as they would that of any other Bishop in the church, of course, having the power of examining it. If the case had occurred in Rome, where the witnesses could be had, the case would be more likely to be gone, into at Rome than another case that happened here. In fact, if the case had happened in Rome, I should hesitate about deciding upon it, because I should think that the natural place for it to be decided would be at Rome.

But supposing the parties were here, and one, of them was to appeal to my jurisdiction, I should decide as I should in any other case.

And in that case, in the estimation of the Roman tribunals, my judgment would be a standing judgment till it was reversed.

I have never had an instance of that kind brought before me.

I have not known any such thing occur as a decision given by a Bishop in this country upon the validity of a marriage at Rome, which was held to be entitled to weight at Rome.

Matrimonial cases ordinarily come before me in two ways. One, is consultively, when persons come before me as a Judge, and I have to give a decision whether a given case is a case of valid marriage or not; in that case frequently they come upon petition. In other cases they come who might be called penitentially; that is persons who have been living in a state, of supposed marriage, which was null, [11-Clark & Finnelly-131] and who for remedy wish to be married, and to have a dispensation granted. Such a case comes: - before me either on the application, of the parties themselves, or of their clergyman.

They might come contentiously before me, but I have never had a case of that kind.

I do, not recollect ever having had a case before me of a litigated marriage, where the parties have been contending one against the other, but I certainly have the jurisdiction to decide such cases.

I know what the process is in the English, Ecclesiastical Courts, in a suit for restitution of conjugal rights.

Such a case has never occurred in my jurisdiction. It would partake more of a mixed than a purely spiritual nature.

I do not know what jactitation of marriage is in the English law.

We have never had a case where a party wishes, to obtain a decree declaring that a supposed marriage is invalid; but such cases might occur.

Where it is for purely spiritual purposes, such, cases would be within my jurisdiction. If they involved civil rights, I should not assume jurisdiction.

But if the parties would submit to the decision as a spiritual one, and act upon that decision, in that case, civil consequences might follow.

Supposing that A. and B. came before, me, and that A. said that B. pretended that they were: - man and wife, and A. denied that there was any such marriage between them: -

I should have, no power to hear evidence, to summon people before me, or to hold a Court; and therefore, I could only treat the case, as between the two, parties.

[11-Clark & Finnelly-132] Where both the parties submitted to my jurisdiction, but opposed each other contentiously, I should have a right to decide the point of law, to decide, what was their duty.

A contentious suit might originate before, me, in the way that was mentioned just now; that case, might come before me, where one of the parties might make application, stating that he did not consider himself married to the other, and asked for a

11 Clark & Finnelly 133, 8 ER p1053

separation; and where the other party, the woman, might maintain that she was married. The case might be referred to me, for judgment by the parish priest, or by the parties themselves.

But supposing there was a contentious suit, supposing one party wanted to proceed against the other, but the other was unwilling to submit, I could have no right to force either of the parties, except by spiritual means. I could tell that person, It is your duty, if you are married, of course, to abide my judgment; my decision is that you are married.

I should, under such circumstances, decide whether they were living in wedlock or living in fornication.

Whether it was a valid marriage or not, as far as I could have the evidence before me; but I could not compel evidence in any way, undoubtedly.

Supposing I declared the marriage void, and those parties lived together afterwards at Rome, the authorities at Rome might or might not act upon my judgment, and compel those persons by ecclesiastical censures to separate.

I do not know that they would act, because they are very, prudent and very cautious; and I do, not know an instance in which they have acted with regard td strangers, in separating them, or entering into those, questions.

[11-Clark & Finnelly-133] With respect to English subjects they would not interfere, unless the matter came in the way of police.

Supposing two Italian subjects were in this country, and a question arose with regard to their marriage, and I pronounced it void, my judgment would be treated at Rome, for all ecclesiastical purposes, as a judgment, until reversed.

And civil rights would be administered upon the footing of that judgment?

If they had my attestation that they had not been married in this country, and that I considered the marriage they had contracted to be null and void, the Roman Court would act upon that judgment till it was reversed.

Supposing two, Catholics in this country, and that one of the parties chose to live separate, and the other wished to continue to live in a married state, it would be competent to the person wishing to live in a married state to apply to me, purely upon ecclesiastical grounds, to call upon, the other to live according to the contract of marriage.

After I had pronounced the marriage to be valid, and called upon them to live together, the person that did not obey would be subject to ecclesiastical censure. The Court of Rome would in such a case deal with my judgment in like manner as in other cases I have stated.

The only difficulty is how such a case, would be likely to be brought before it.

My statement is that my judgment, upon all questions within my jurisdiction, is a judgment accredited at Rome until reversed.

The Attorney-general: - The witness is clearly not [11-Clark & Finnelly-134] a professional lawyer. To render his evidence admissible he must have, some peculiar means of knowledge, as from office, for instance. Whether he has so or not the Committee must decide.

The Lord Chancellor: - He comes within the description of a person peritus virtute officii. I ought to say at once, that it is the universal opinion both of the Judges and the Lords, that the case (The Queen v Dent, I Car and Kir. 97) as represented to have been decided by Mr. Justice Wightman, is not law.

Lord Langdale: - The witness is in a situation of importance; he is engaged in the performance of important and responsible public duties; and connected with them, and in order to discharge them properly, he is bound to make himself acquainted with this subject of the law of marriage. That being so, his evidence is of the nature of that of a Judge. It is impossible to say that he is incompetent.

The counsel were informed, that the Committee was of opinion that the witness came within the description of a person peritus, and that therefore his evidence was admissible. He was then examined, and gave evidence to the effect that the marriage contracted in this case was valid by the law of Rome. After he had Concluded his evidence, some discussion ensued as to whether the claimant might call any additional witnesses on the point of the marriage law, should the Crown produce evidence to meet that which had been already adduced.

The Lord Chancellor: - The Solicitor-general has heard all the evidence. I do not think that the junior counsel for the claimant can be called upon to sum up the case till he knows whether this is all the evidence [11-Clark & Finnelly-135] that will be required on

11 Clark & Finnelly 136, 8 ER p1054

this point; and the counsel for the Crown ought now to elect what course they mean to adopt, and to say whether they will or will not call evidence. Sir T. Wilde ought, however, to understand that he cannot be allowed, unless as evidence in reply, to call any other evidence than what he may think fit to do before he closes his case. He wishes, if the Crown should think it right to call evidence, that he may have the opportunity to produce additional evidence. That is not a position of things which can ever be acceded to.

The Solicitor-general was not prepared to make, his election at that moment.

Sir T. Wilde, after a short consultation with his learned colleagues, said that he would take upon himself to close the claimant's case upon the evidence as it now stood.

Mr. Erle then proceeded to sum up the case of the claimant. He first of all discussed very fully the questions of the marriage in fact, and of the validity of that marriage by the law of England and the law of Rome. (As the decision turned wholly on the construction of the Royal Marriage Act [12 Geo. 3. s. 11], this part of his argument is omitted): - The remaining question is as to the application of tie Royal Marriage Act. The enactment in the first clause is one which annuls and renders void a marriage made

contrary to the provisions of that Act. The expression, as to every descendant of Geo. 2, is said to be equivalent in its effect to a clause extending to all marriages contracted within or without the realm of England. This is a statute passed to deprive certain persons, of a natural right, a right sanctioned and enforced [11-Clark & Finnelly-136] by the law both of God and man, or at least to prevent those persons exercising that right, unless in a very limited and restricted manner. Can such a law, without any direct and express provisions, apply to marriages] contracted in a foreign country? It is a general rule in the laws of all countries, that leges extra, territorium nom obligant. An Act of Parliament may be so worded as to operate on all Englishmen everywhere; but unless it is so worded, its operation must be confined within the realm, of England. The recent Slave Trade Suppression Act, 6 and 7 Vict c. 98, is an instance where that rule was expressly acted on. The 5 Geo. 4, c. 113, was directed to the same, purpose, and many of the acts there prohibited were acts which could not be done, within the realm of England; yet for want of express words extending the operation of that Act to foreign countries, it could not be applied to persons who there did the very acts which it was intended to prohibit. The Act against bigamy, 1 Jac. 1, c. 11, enacted in the broadest terms, that if a. man being married shall marry again, he, shall be guilty of felony. Under that statute, a man who having married here, went abroad, and during the life of his wife there married another woman, could not be punished (Anonymous, Sid. 171). It may be true that the rule as to criminal laws not affecting a man beyond the limits, of the country in which they were made, was applicable, there, and affected the operation of the statute; but it did so only because of the omission of the word " wheresoever.," or the words " in England or elsewhere," or other equivalent expressions; and this objection was held applicable in the same manner to the 35 Geo. 3, c. 67; and, therefore, when the 9 Geo. 4, c. 3 1, was passed, the words " within the realm of England or elsewhere " were, introduced to get rid of the difficulty. The same rule has, been [11-Clark & Finnelly-137] held in Ireland, where the statute 9 Will. 3, c. 3, against mixed marriages, was rendered inoperative as to marriages out of Ireland, by the want of some: - such expressions and another Irish Act, the 2 Anne, was passed to supply the defect, and there the words 9 out of the realm " were introduced. For the same reason the two. Irish statutes 9 Geo. 2, c. 11, and 19 Geo. 2, c. 13, were held to operate, in Ireland, and, not beyond its territory. The English statute 15 Geo. 2, c. 30, declaring that if any lunatic should marry, every such marriage, should be null and void, was; for the same reason inoperative out of England. And it is yet doubtful whether the 5 and 6 Will. 4. c. 54, prohibiting all marriages, of persons within certain degrees, of relationship, and declaring such marriages absolutely null and void, would apply to such marriages contracted by British subjects out of the realm of England.

The Lord Chancellor: - With respect to the statute just mentioned, I wish to observe that I am supposed to have brought in a Bill to prohibit a man from marrying his former wife's sister; I did no such thing. The statute simply says that such a marriage, shall be void, not voidable. The statute, was passed merely for the purpose of getting rid of the doubt which might for years leave two parties and Their

11 Clark & Finnelly 138, 8 ER p1055

children in the belief that a valid marriage had taken place, subject in fact to have that marriage declared void by a suit instituted just before the death of one of the parties. As to the last Act relating to the slave trade, it was absolutely necessary to be passed; for the former did apply in some instances, and it was necessary to draw the line to show distinctly where it was and where it was not applicable.

[11-Clark & Finnelly-138] Mr. Erle: - The principle contended for is however, proved by these Acts. In the Acts against usury, 13 Eliz c. 8, and 12 Anne, s. 2, c. 16, words of the widest signification were employed, but it was held that they applied only to contracts made in England, and did not apply to those which were, made elsewhere), and the 14 Geo. 3, c. 79, and 3 Geo. 4, c. 47. were passed to remedy the defect. The same observation applies to the gaming statutes, 16 Car. 2, c. 7, and 9 Anne, c. 14.

The Lord Chancellor: - Suppose a divorce case, where parties are to be prohibited from marrying, what words must be used to effect that object?

Mr. Erle: - The Act must expressly name the parties, and prohibit them from marrying anywhere. The rule of limited construction of such an Act as this, is especially applicable: - to cases of marriages: - first, because the principle, of all law is to favour marriage as the most important of all natural and civil rights; and, next, because of the universal rule of law, that marriages valid by the law of the place where they are celebrated, are valid all over the world. It would be an infraction of the most important principles of law if the Committee should decide that a general Act of Parliament, making void a certain class of marriages, could impose a personal incapacity on a party to whatever country he might go Though by the law of that country his marriage was good. It could only be out of excessive, caution that it was considered necessary to ask the consent of the Sovereign of this country to the marriage of the son of the present King of Hanover. The law of the place of the contract must alone

decide on its validity. Scrimshire re [11-Clark & Finnelly-139] v. Scrimshire (2 Hagg. Cons. Rep. 395. 417) recognised that doctrine, and it was there said, that from the mischief and confusion that would arise to the subjects of all countries if that was not the rule, it must be inferred that by the general consent of nations, contracts of this kind must be determined by the laws of the country where they were, made. How otherwise would it be possible to decide, where two parties, had, different places of residence? From the time of that case (1752) to this moment the national faith of this country has been pledged, that the law of the places of the marriage is binding upon the law of England. Compton v Bearcroft (2 Hagg. Cons. Rep. 443, 414, n; Bull. N. P., 6th ed. p. 113, 114), and Ryan v Ryan (2 Phill. 332), adopt that principle. A different rule would be most mischievous. It would enable, a man to get married at a foreign place, and give him the privilege of breaking his marriage when he came back here. The language, of the Court in Scrimshire v Scrimshire leads directly to the conclusion that the law will not permit such mischievous inconsistencies; and so does the language of this House in the cases of Warrender v Warrender (ante, vol. ii. p.488),and Birtwhistle v. Vardill(Id. p. 571, and vol. vii. p. 895). Incapacity exists in many cases in law. It is said that an infant is incapable of binding himself except for necessaries; that he is incapable of borrowing money and doing many other things; and yet it is unquestionable, that this supposed incapacity, if set up as a defence, in a country where a contract is attempted to be enforced, must be shown to be applicable to the contract in the country where that contract was made. Mate v Roberts (3 Esp. Rep. 163). That is the case in other countries, [11-Clark & Finnelly-140] as well as in England. France affords, perhaps, the only exception to the rule. The Code Civil, in the Preliminary Title, (Art. 3), says, that " the laws relating to the state or capacity of persons govern Frenchmen, even when residing in a foreign country." But in another part of the Code (Art. 170) this general proposition is limited by a specific declaration, that " the marriage of a Frenchman in a foreign country shall be) valid if celebrated according to the forms used in such country." It goes on to provide for the observance of certain forms, which it is manifest could never be required nor observed in any country where the law of France did not prevail, and the general declaration must therefore be taken as overriding the specific provision;. and, in fact, the Courts of France have, often held that a marriage of a French subject, celebrated according to the law of the place where it was contracted, was valid. This principle has again, and again been distinctly upheld by the American Courts; and Story (Conflict of Laws, c. iv s. 102 et seq.) refers to cases where men struck with

11 Clark & Finnelly 141, 8 ER p1056

incapacity by the rules of law in their own State, went away into another for the purpose of evading the law, performed the act which they were incapable of performing in their own State, and then returned to that State where the validity of what they had elsewhere done was acknowledged. One of these cases was the marriage of a white, man with a black woman, such marriage being absolutely prohibited in the State, to which the man belonged. This principle is so important, that unless the Legislature has most clearly and expressly declared an intention to avoid it, such intention cannot be implied: - Dwarris on Statutes (vol. 2, p. 647). The passing of this Act was strongly opposed, and it [11-Clark & Finnelly-141] may reasonably be supposed that the words which are necessary to give it effect abroad were purposely left out. Her, present Majesty (had she married before Her accession to the throne), the Princess Charlotte, and the Princess Augusta of Cambridge, might have married, and their issue would have been exempt from the operation of the Act. It. does not extend to Ireland, and therefore there can be no doubt, that if the line of succession should come, into the Duke of Sussex, the present claimant would be entitled to the allegiance of Ireland. That country, for such a purpose, stands in the situation of a foreign, country.[Lord Brougham: - Not as to purposes of the succession of the Crown, for there is an Irish Act which gives the Crown of Ireland to any one who holds the Crown of England.]-The words, of this Act are indefinite and vague., and cannot be permitted to have effect against the great principles of the law which all nations have recognised. There has been clearly a marriage in fact, in this case, one which by the general law of England would be valid, but which is sought to be avoided by the doubtful terms of this Act of Parliament by straining the words of a disabling and penal statute. NO such violation of known and universally recognised principles will be sanctioned by this Committee.

The Lord Chancellor: - I propose to put a question to the Judges. It is upon the construction of the Royal Marriage Act.* If the Judges should wish for any further argument, any argument from the Attorney-General, they will intimate their wishes to me, and I will take care to make the necessary arrangements. I propose to submit the following question to the Judges: -

" Evidence being offered of a marriage solemnised [11-Clark & Finnelly-142] at Rome in the year 1793 by an English priest, according to the rites of the church of England, between, A. B., a son of his Majesty King George 3, and C. D., a British subject, without the previous consent of his said Majesty, assuming such evidence to have, been sufficient to establish a valid marriage between A. B. and C. D. independently of the provisions of the statute 12 G. 3, c. 11, would it be sufficient, having regard to that

statute, to establish a valid marriage in a suit, in which the eldest son of A. B. claims lands in England, as heir of A. B., by virtue of such alleged marriage? "

The Judges requested time to consider the question, which was granted.

Lord Chief Justice Tindal now delivered (July 9) the opinion of the Judges: - In answer to this question, I am requested by my brethren to inform your Lordships, that it is the unanimous opinion of all the Judges who have, heard the argument in this case, that assuming the evidence given to have been sufficient to establish a valid marriage between A. B. and C. D. independently of the provisions, of the statute 12 G. 3, c. 11, it is not sufficient, having regard to that statute, to establish a valid marriage in a suit, in which the eldest son of A. B. claims lands in England, as heir of A. B., by virtue of such alleged marriage. The question turns entirely upon the legal construction of that statute, and is shortly this: - whether, to bring a marriage within the prohibition of that statute, it is necessary that it should have been contracted within the realm of England; or whether the statute extends, to prohibit and to annul marriages, wherever the same be contracted or solemnised, either within the realm of England or without?

[11-Clark & Finnelly-143] It is scarcely necessary to observe, that as your Lordships' question states that

A. B. is a son of his late Majesty King George 3, it applies to a descendant of the body of his late Majesty King George 2, not being the issue of any Princess married into a foreign family; so that A. B. falls precisely within the class or description of persons with respect to whose marriage the statute intends to legislate; and, that, as he falls

11 Clark & Finnelly 144, 8 ER p1057

within that description or class, the statute may be considered as if it had been passed with respect to him personally and individually; as if it had enacted in express terms,

"That A. B. shall not be capable of contracting matrimony without the previous consent of the reigning Sovereign, signified under the Great Seal and declared in Council and again; " That the marriage of A. B., without such consent first had and obtained, shall be null and void to all intents and purposes."

My Lords, the only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more, can be necessary than to expound those, words in their natural and ordinary sense. The words themselves alone do in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe mean of collecting the intention, to call in aid the ground and cause of making the statute and to have recourse to the preamble, which, according to Chief Justice Dyer (Stowel v Lord Zouch, Plowden, 369), is " a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress."

[11-Clark & Finnelly-144] And, looking to all these grounds of interpretation, we think they concur, in the present instance, in demanding that construction of the statute at which we have arrived. For in the first place, the words of the statute, itself appear tot us to be free from ambiguity. The prohibitory words of it are general: - " That no one of the persons therein described shall be capable of contracting matrimony." And again: - " That every marriage or matrimonial contract of any such person shall be null and void to all intents and Purposes whatsoever." The statute does not enact an incapacity to contract matrimony within one particular country and district or another, but to contract matrimony generally, and in the abstract. It is an incapacity attaching itself to the person of A. B., which he carries with him wherever, he goes. But as a marriage once duly contracted in any country will be a valid marriage the world over the incapacity to contract a marriage at Rome is as clearly within the prohibitory words of the stature as the incapacity to contract in England. So again, as to the second or annulling branch of the enactment, " that every marriage without such consent shall be null and void; " the words employed are general, or, more properly., universal; and cannot be satisfied in their plain, literal, ordinary meaning, unless they are hold to extend to all marriages, in whatever part of the world they may have been contracted or celebrated.

The words of the second section throw light upon and confirm the interpretation to be given to the first. By the second section the descendants of the body of Geo. 2, being above the age of 25 years, who shall persist in their resolution to contract a marriage disapproved of or dissented from by the King, upon giving notice to the Privy Council, are, enabled, at [11-Clark & Finnelly-145] any time from the expiration, of 12 calendar months after such notice, to contract such marriage, and such marriage may be duly solemnised without the previous consent of his Majesty his heirs or successors; and such marriage is declared to be good, as if that Act had never been made, unless both Houses of Parliament shall, before the expiration of the said 12 months, expressly declare their disapprobation of such intended marriage. The words employed in this section are the same as in the first, " to contract a marriage," and " marriage " generally and without any reference to the: - country wherein the marriage

is contracted or solemnised. But as no doubt could be entertained by any one but that a marriage, taking place with the due observance of the requisites of the second section, would be held equally valid whether contracted End celebrated at Rome or in England; so we think it would be contrary to all established rules of construction if the very same words in the first section were to receive a different sense from those in the second; if it should he held that a marriage at Rome, contracted with reference to the second section, is made valid, and at the same time a marriage at Rome is not prohibited under the first.

Indeed it is scarcely supposable that the Legislature should have provided the minute and laborious, machinery of the second section; that it should have interposed such cheeks against a marriage without consent, and at the same time have rendered such a marriage ultimately valid, in one given state of circumstances; if the party himself who is the subject of such legislation, by an easy journey or a voyage of a few hours, could render all these provisions useless, and set the statute at defiance, by

11 Clark & Finnelly 146, 8 ER p1058

contracting [11- Clark & Finnelly-146] a marriage abroad with whomever he thought proper. And it is not unworthy of remark, whilst we are looking to the body of this Act in order to discover its interpretation, that the very exception from the prohibitory clause, of the issue of those Princesses who have married or may marry into foreign families, affords some proof that marriages abroad could not have been out of the view or contemplation of the Legislature at the time of passing the Act, as such marriages in all probability might not unfrequently be celebrated out of England.

It was contended in the course of the argument at your Lordships' bar, that an Act of the English Legislature can have no binding force beyond, or out of the realm of England; and if by this is meant only, that it can have no obligatory force upon the subjects of another State, the position is no doubt correct in its full extent; but it is equally certain that an Act of the Legislature will bind the subjects of this realm, both within the kingdom and without, if such was its intention. Indeed it was admitted by the learned counsel for the claimant, that if there had been found in this statute the words " marriages within the realm of England, or without," or any other words equipment thereto, under such an enactment the capacity to contract a marriage at Rome would have been taken away, and the marriage, there solemnised, would have been made null and void. But if the words actually found in the statute are comprehensive enough to include all marriages, as well those, within the realm as without, as we think they are; and if, at the same, time, the restraining the sense of those words, to marriages within England, must necessarily defeat the object and purpose of the Act, as we think it would; then it seems to follow, [11-Clark & Finnelly-147] that the construction of the Act must be the same, whether those words are, found within the statute or not. Surely, if the marriage of a descendant of George the Second, contracted or celebrated in Scotland or Ireland, or on the Continent, is to be held a marriage not prohibited by this Act, the statute itself may be considered as virtually and substantially a dead letter from the first day it was, passed.

But the object and purpose for which the Act was passed,-and the mischief intended to be prevented thereby, are clear, and leave no doubt as to the proper construction of the Act. It was founded upon the policy and expediency which requires that no marriage of any branch of the Royal Family should be contracted, which might be detrimental to the interests of the State, either at home or abroad. The object declared by the preamble is " more effectually to guard the Descendants of his late Majesty King George the Second, from marrying without the approbation of the reigning Sovereign;" it declares " the marriages of the Royal Family to be of the highest importance to the State;" and "that therefore the Kings of this realm have ever been entrusted with the care and approbation thereof." But this object is frustrated the mischief is remediless, and the power of the Sovereign nugatory, if the marriage, which in England would have been confessedly void, is to be held good and valid when celebrated out of the country.

It was argued on the part of the claimant, that as it is directed in the 1st section of the Act, that the consent under the Great Seal shall be set out in the licence and register of the marriage, and as this direction can only be applicable to the case of a marriage celebrated in this country, so the prohibition must be construed as confined to a marriage in this country [11-Clark & Finnelly-148] only, and as not extending to a foreign marriage. But to this objection it appears to us to be a sufficient answer, that the only words in that section that are essential to make the marriage a valid marriage, are those which require " the previous consent of his Majesty, signified under the Great Seal, and declared in Council;" and that the words which follow, directing such consent to be set out in the licence and register of the marriage, are, as the very words import, directory only, not essential, and are applicable to those cases alone where they can be applied, namely, to the case of a marriage celebrated in England by licence. For it would be impossible to contend, if the marriage of A. B. had been celebrated at Rome, with the previous consent of his Majesty King George the Third, signified under the Great Seal, and declared in

Council, that such marriage would not have been good and valid to all intents and purposes, although the observance of the direction that such consent should be inserted in the licence and register of the marriage, had become, in that case, impracticable.

It was further contended in argument, that inasmuch as by the 3rd. section of the Act all persons who wilfully and knowingly presume to solemnise, or assist or be present at the celebration of any marriage, or at the making of any matrimonial con-

11 Clark & Finnelly 149, 8 ER p1059

tract without such consent, shall incur the penalties of a praemunire; and as there is no provision made, in this section for the trial and consequently the punishment of the offender where the offence shall be committed out of England, the necessary inference must be that the statute itself does not extend to prohibit a marriage out of England: - but we think the inference that the penal clause is itself defective, in not making provision for the trial of British subjects when they violate the statute out of [11-Clark & Finnelly-149] the realm, is the more just and reasonable, inference; not that we should refuse, on that account, to give the plain words of the statute their necessary force, and hold the enactment itself to be substantially useless and inoperative.

We therefore think, fox the reasons humbly submitted to your Lordships, that the eldest son of A. B., under the circumstances stated in your Lordships' question, and regard being had to the statute 12 G. 3, c. 11, could not make out a good titter as heir to A. B., to the lands sought to be recovered.

The Lord Chancellor: - Your Lordships will, I am sure, agree with me in expressing our thanks to the learned Judges for the care and attention which they have bestowed on this subject, amidst their other incessant and laborious occupations think, from the nature, of the question, it may be proper that we should postpone the further consideration of this case.

Lord Brougham: - I agree with my noble and learned friend in tendering our thanks to the learned Judges, for their most lucid, able, and convincing argument which the learned Chief Justice has just delivered. I have but one doubt about the postponement, which is on account of putting the parties to the expense of an additional attendance: - I am quite prepared to give my opinion on the case at this moment.

The Lord Chancellor: - I suggested the postponement with a view to consult the wishes of other noble Lords; not from any doubt I entertain, for I entirely concur in the opinion on the statute which has been expressed by the learned Judges. In fact, I never [11-Clark & Finnelly-150] entertained any doubt upon the words, the object of the Act, or the provisions of that particular section, the second section, to which the observations of the learned Chief Justice have been directed. The answer which has been given to the question proposed by your Lordships is decisive of the whole case, because the same rule that would apply to estates would apply to honours.

Lord Cottenham: - My Lords, I do not apprehend that there is any difference of opinion as to the construction of the Royal Marriage Act [12 Geo. 3, c. 11]; and if so, it would seem to be better to dispose of the case at once. I am of opinion that the marriage is invalid under the statute.

The Lord Chancellor: - I shall therefore propose to resolve, that it is the opinion of the Committee that the claimant has not made out his claim.

Lord Brougham: - My Lords, in agreeing to the motion of my noble and learned friend, and in expressing my entire concurrence with the opinion o the learned Judges, I do so upon the ground not only that the object of the Act is clear, but that the words of the Act are sufficient (f or that is necessary also) to accomplish the manifest purpose of the Act. I say this, because, it is not a sufficient ground to hold that the purpose is clear, unless the words are sufficient to accomplish that purpose., though otherwise the Act might have been nugatory. It was so in the case of the General Marriage Act. It was quite clear that that Act was intended to prevent minors from marrying without consent, unless with the publication of banns; and yet notwithstanding that, by going to Scotland, a very short journey, the parties intended to [11-Clark & Finnelly-151] be affected by the Act, namely, wealthy persons, could easily accomplish the purpose, and defeat the Act. My opinion is that if that Act had used the same phraseology as this, and had rendered the parties incapable of contracting matrimony, we should never have heard of Compton v Bearcroft (Bull. N.P. 6th ed. 113; 2 Hagg. Cons. Rep. 443, 444 n. and Ilderton v Ilderton (2 H. Bl. 14: -5). At all events, there is sufficient in my mind to stamp with perfect accuracy the opinions delivered by the learned Judges. Parties are rendered incapable of contracting Matrimony, and not merely, as in the case of Lord Hardwicke's Act, the marriage rendered null and void. It therefore follows that a Prince going abroad and contracting matrimony, is for all British purposes, with a view to the Crown and the rights of Peerage, incapable of contracting matrimony; and any marriage so contracted is null and void.

11 Clark & Finnelly 152, 8 ER p1060

The Lord Chancellor: - I do not entertain the slightest doubt of the sufficiency of the evidence to establish the marriage as a marriage in fact. (Vide infra, p.153.)

Lord Denman: - After the observations of my noble and learned friends, there does not appear to me to be any sufficient reason for postponing the decision on this claim. I join in the thanks which I think we owe to the learned Judges for the very clear and satisfactory document which has been read before your Lordships, and I am happy and very much satisfied in being enabled to say that my opinion entirely agrees with that of your Lordships; I. think the operative words of the Royal Marriage Act [12 Geo. 3, c. 11], taken alone, are perfectly clear to show that this is no marriage by the law of England.

[11-Clark & Finnelly-152] Lord Campbell: - My Lords, I agree with my noble and learned friend, the Lord Chancellor, that, as the evidence now stands, there would be a marriage in fact; because the evidence that has been given to us of the Roman law, uncontradicted as it is would prove that a marriage at Rome of English Protestants, contracted according to the rites of their own church, would be recognised as a marriage by the Roman law., and therefore would be a marriage all over the world. I own that that evidence rather surprised me. I had imagined that it was impossible there could be a valid marriage at Rome, between Protestants, by a Protestant clergyman, such as the Roman law would recognise. As the evidence stands at your Lordships' bar, it would appear, however, that the Roman law would recognise such a marriage without the religious ceremonies required by the Romish church before, the Council of Trent, namely, without the intervention of a priest and would treat it as a marriage valid by the universal law of the church before the date of the decree of that Council; and it would appear that the decree of the Council of Trent respecting marriages, was not meant to apply to the marriage of Protestants, who could not conform to it. That, my Lords, I think is the universally prevailing opinion. But when we come to the Royal Marriage Act, it seems to me that there is an insuperable bar to the validity of this marriage. The elaborate opinion that has been delivered by the Lord Chief Justice of the Common Pleas appears to me to have entirely exhausted this part of the subject. It accords with the opinion I had originally formed. I kept my mind, however, entirely open till I had heard the arguments on both sides, and I now am confirmed in my previous opinion by the legal reasoning laid before us in the most admirable opinion [11-Clark & Finnelly-153] we have this day heard delivered by the Lord Chief Justice. I entirely concur with that opinion. I have no doubt that it is competent to the British Legislature to pass a law making invalid the marriage of particular British subjects all over the world. I have no doubt that it was the object of that Act of Parliament to invalidate marriages of the descendants of George the Second (with the exception of Princesses married into foreign Royal families), without the consent of the Crown, wherever those marriages might be celebrated; and I am clearly of opinion that the intention is sufficiently testified by te language which has been employed.

The Lord Chancellor: - My Lords. I wish to explain, that by a " marriage in fact," I mean that I think the evidence is sufficient to show that these parties were married at Rome by a clergyman of the church of England, in conformity with the rites and ceremonies of the English church. With regard to the evidence, as referred to by my noble and learned friend (Lord Campbell). that evidence is sufficient, as it at present stands to show that this marriage would be a valid marriage of Protestants at Rome, according to the law of Rome: - whether such a marriage would be a valid marriage in this country for any purpose independently of the Royal Marriage Act [1 2 Geo. 3, c. 11], is a point upon which I give no opinion.

Lord Brougham: - I give no opinion upon that.

Lord Cottenham: - My Lords, after the discussion which has taken place, I think it right to say that my opinion is formed entirely and exclusively upon the Royal Marriage Act. It is only that part of the case which has been concluded and that is the only part upon which[11-Clark & Finnelly-154] we can properly express an opinion. I entirely agree in
the opinion which has been expressed by the learned Judges, inasmuch as by the construction of the Royal Marriage Act [12 Geo. 3, c. 11], whether the marriage would be valid by the law of Rome or not, it would not be valid by the law of this country. My opinion, therefore, is against the claim.

It was then resolved that the claimant had not made out his claim to be Duke of

11 Clark & Finnelly 155, 8 ER p1061

Sussex, Earl of Inverness, and Baron of Arklow: - and the Chairman was directed to report the same to the House.

The resolution was accordingly reported to the House, and affirmed. And the same was reported by the House to Her Majesty. Lords' Journals, 9th July 1844.

C. C.

Sussex Peerage Case [1844] 11 Clark and Finnelly 764, 8 ER 1292
Report Date: 1844
[11-Clark & Finnelly-764] APPENDIX.

(Some gentlemen having expressed a wish to Dr. Wiseman's evidence on the claim to the Sussex Peerage, as to English marriages in Rome, the material passages extracted from the printed evidence are here subjoined. It was omitted in the Report, (ante, p. 117), as there stated, because the claim was, disposed of on the construction of the Royal Marriage Act alone.)

"The law of the Council of Trent is that a marriage, to be valid must be in the presence of the parish priest and two witnesses. The Council of Trent does not point out the particular form of the ceremony of marriage; the Roman ritual prescribes that. To make a marriage lawful, it would be necessary to conform to the Roman ritual) but it would be valid and binding-though the forms were not observed; but the parties would be subjected to censure in the Ecclesiastical Courts, for illegal proceedings. It would not be required that a Marriage which had been so celebrated irregularly should be repeated: - it could not be rendered more binding by any subsequent ceremony; it would be indissoluble."

" I never heard of any attempt being made by two Protestants to be married according to the Catholic ceremonial in Rome, or before the parish priest; nor do I believe that they would be permitted to avail themselves of the law. The parish priest would not be under an obligation to solemnize the marriage of two Protestants. There has been no regulation upon that subject, nor can I refer to any decree relating to it. But supposing a marriage of two Protestants, celebrated at Rome in the presence of a Protestant clergyman, according to the English Protestant ritual, should afterwards [11-Clark & Finnelly-765] come before a tribunal there for a decision, upon it, I have no hesitation in saying that that tribunal would pronounce for the validity of the marriage. Such persons so married, if they afterwards professed the Roman-catholic faith, would not be required to be married again, nor to do any act to confirm the marriage; nor would they be allowed to separate, nor could either of them marry again during the life of the other. The children of such a marriage would be deemed legitimate. I believe that such a marriage would not subject the parties to any ecclesiastical censure. My decided opinion is that if parties were married according to the forms which they considered, in accordance with their religious opinions, binding upon them as a matrimonial contract, the law would consider them as man And wife, and would not allow a separation. If two persons married according to the form of their own religion, they would undoubtedly be held as lawfully married. If the parties themselves considered the marriage sufficient, and if in the opinion of persons of character, of their own country and religion, it was considered equivalent

11 Clark & Finnelly 766, 8 ER p1293

to a marriage,-as if two Scotch persons married according to the law of their country, it would, on that basis, be considered sufficient and binding.

" The decree of the Council of Trent, declaring void all marriages which are not celebrated coram parocho and two witnesses, is not binding in any country in which that decree has not been duly promulgated, but there the old canon law still prevails as to the marriages of Catholics. The decree in its terms makes no distinction between Roman-catholics and Protestants, but practically it does not extend beyond the former; and its object was to do away with a great practical abuse respecting marriages among Catholics, and not in any way to strike at Protestants. That is the interpretation of the decree according to Layman's Course of Moral Theology; a work of the highest authority in all ecclesiastical matters, and cited in the judicial tribunals in Roman-catholic countries."

The preceding extracts are made from Dr. Wiseman's evidence, given before the objection was taken to his competency. After that objection was overruled, and he was [11-Clark & Finnelly-766] desired to state the grounds of and authority for his opinion that by the law of Ro-me a marriage of two Protestants celebrated as before described, would, be held valid there, he proceeded thus: -

"I consider this case as a practical case: - Supposing the case of a marriage, such as has been stated, came before the Roman tribunals, and it had to be decided whether for all civil purposes it was to be held good or not, the decision would be that they were to be considered as married, and the children would inherit. That is grounded upon the principle that the operation of that decree of the Council of Trent was not intended to have effect to the extent of annulling and invalidating Protestant marriages. I had just alluded to the decree, when the question of my admissibility as a witness was introduced; but I had observed that this decree is under the peculiar condition of not counting into operation until 30 days after it is promulgated in each parish, and from that moment forward we find the opinion of theologians to have been, and decisions framed in conformity with that opinion, that in cases where Protestants married according to their own form, even in places where the Council of Trent was promulgated, those marriages were valid. It is true that in the decision of such cases there have been discrepancies, and that the decisions at Rome have varied, sometimes being given for the marriage, and sometimes against it; and irregularities, in consequence of that difference of opinion, have arisen. Pope Benedict

XIV. has entered at great length into the question, and the grounds upon which it was decided. He issued a bull, addressed to the Bishops of Belgium, in which he pronounced marriages between Protestants in Belgium, though the Council of Trent had been there promulgated, to be valid. This bull, which goes at length into the question, is not a remedial one. It is not saying that they shall be considered as valid, and shall be valid in futuro, but it declares that they have all along been valid, notwithstanding the promulgation of the Council of Trent in those places; and he gives, in the recitals of the bull, the reasons of the decision; reasons which apply to any other similar case. He gives a variety of reasons, which it is not necessary to [11-Clark & Finnelly-767] enter into; but I may mention the principal, and those which he dwells upon most. First, that it could not be the intention of the Council of Trent to bind Protestants in any way, from the very fact of their having given 30 days to elapse between the promulgation and the operation of the decree, which could only be in order to enable Protestant powers, to prohibit the execution of the decree; because, he says, it could not be expected that Protestants would go before a Catholic priest tot be married: - and, he says, if we admit, in the present case, those marriages to be invalid, we introduce the very evil which it was the intention of the Council to avoid, and we shall make the decrees of the Council a subject of dislike to Protestants, which it evidently was the object of the Council by that decree to avoid. Then he observes, that it would be contrary to the spirit of the Council to interfere in that way, inasmuch as it would produce a serious evil to the Catholic religion, which the Council themselves wished to avoid; which was that of fictitious conformity or fictitious conversion, for the purpose of getting rid of matrimonial arrangements: - and he alludes to the danger there would be of persons that wished to become Catholics, being prevented by the fear of having to be considered as having lived until then in a state of concubinage. Those evils are such, that he cannot suppose the Council to have intended to produce them; and therefore he interprets the decree of the Council in such a way as not to invalidate the marriages of Protestants."