Suppose a man goes to Calais, marries there and comes away the next day, I should hold that a good marriage, according to the laws of this country That is as much a good marriage, and as agreeable to the law, as a marriage in Scotland I shall never think it my duty to enter into the laws of France or Denmark, to apply them in such a case as this; for all the foreign laws, as the several advocates have said, relate to subjects, and to people to be considered as subjects, and these people are not so to be considered even upon their own shewing. Upon the arguments which I have **[436]** heard, therefore, and upon every view which I can form of this case, there appears to be no foundation in law for this libel—and therefore I reject it.

An appeal was prosecuted to the High Court of Delegates, and a full commission was granted, consisting of three Spiritual Lords, the Archbishop of York (Markham), the Bishop of Rochester (Thomas), and the Bishop of Peterborough (Hinchcliffe): Three Temporal Lords, the Earl of Hillsborough, Earl of Galloway, and Lord Sandys: Three Judges of the Common Law Courts, Mr. Justice Willes, Sir Beaumont Hotham, Sir James Eyre: Three civilians, Peter Calvert, LL.D., Dean of the Arches, Sir James Marriott, Knight, LL.D., Judge of the Admiralty; William Macham, LL.D.

Counsel for Miss Harford, the King's Advocate, Dr Wynne, the Solicitor General, Mr Mansfield; Mr. Kenyon, Dr. Compton, and Mr Dunning. For Mr Morris, Mr. Bearcroft, Mr. Arden, Dr. Harris, Dr. Bever, Dr. Scott, and Mr Erskine

On the 28th February, 1781, the Court reversed the sentence of the Court below, and admitted the libel and retained the principal cause, and on the 21st May, 1784, the cause having been fully argued on the proofs, &c. the Delegates pronounced the said pretended marriage, howsoever had and solemnized, &c null and invalid.

In *Fust* v. *Bowerman*, Arches, 22d February, 1790, the Court (Sir W. Wynne) adverted to the grounds of that judgment, and observed: "The case of *Harford* v. *Morris* was that of the marriage of a girl above the age of legal consent, but taken from school by one of her guardians, it was argued on the law as void by the lex loci. But the Judges during the argument desired the counsel to consider whether the marriage might not be declared void on the ground of force and custody. That point was argued by order of the Court, and it is well known that the decision passed ultimately on that principle."

It had been said in argument at the bar, and was not contradicted by the Court, "that Mr Baron Eyre was understood to have said that he felt great difficulty on the other point."

[437] MIDDLETON *v.* JANVERIN, FALSELY CALLING HERSELF MIDDLETON Arches, 21st Nov., 1802.—Marriage of English subjects celebrated abroad, not according to the lex loci, held invalid

[Referred to, *Ogden* v *Ogden*, [1908] P. 63.]

This was a suit of nullity of marriage brought by Edmund Pytts Middleton against Martha Janverin, calling herself Middleton. The marriage was had between the parties at Furnes, in Flanders.

The case was argued by Sir John Nicholl and Dr. Laurence on the part of the husband: and by Dr Arnold and Dr Swabey for the wife

Judgment—Sir W. Wynne. This is a suit of nullity of marriage, brought before me by letters of request from the Chancellor of Winchester, by Edmund Pytts Middleton against Martha Janverin, falsely calling herself Middleton The facts pleaded in the libel and admitted in the personal answers of Martha Middleton are, "that Edmund Pytts Middleton, then a minor between the age of sixteen and seventeen (his father being dead, and his mother married to a second husband), was, in the month of December, 1776, sent to the town of St. Omer, in French Flanders, for the purpose of education, and of learning the French language, that he arrived at St Omer on the 25th of December of that year, and there became acquainted with an English woman of the age of twenty-eight years, who at that time lodged and boarded at a private house at St. Omer On the 28th of March following, they set out with two English ladies for Austrian Flanders, in order to procure a marriage, and arrived at Furnes, which was then one of the **[438]** barrier towns under the dominion of the empress queen, but, by virtue of the treaty of Utrecht, was at that time garrisoned by a body of troops in the service of their High Mightinesses the States General, that they arrived at an inn on Easter Sunday, and that, very soon after their arrival, one of the ladies enquired whether there was not a minister who married English persons

there, and was informed that Mr. Vanderbrugge, minister of the Dutch garrison, had married several English people there, or to that effect."

She further answers, "that although she was present when the said conversation passed, that she did not understand the same, because such conversation was carried on in the French language, which she did not understand, she says that about eleven o'clock in the morning of Easter Sunday, the 30th of March, 1777, she, with the said Edmund Pytts Middleton and two English ladies, went with the landlord of the inn as a guide to the house of Mr Vanderbrugge, who was, as she believes, a priest or minister in holy orders of the Calvinistic or Lutheran Church, that on her arrival there, Mr. Vanderbrugge was informed by one of the English ladies that Edmund Pytts Middleton and this respondent were desirous of being married by him, and that he did celebrate a marriage between Edmund Pytts Middleton and this respondent, in a room in his house, in the presence of the two English ladies, and a man who officiated as clerk on the occasion, and she believes that such marriage was solemnized in the Dutch language, and that Edmund Pytts Middleton, the two English ladies, and herself, were then all **[439]** ignorant of that language; that the marriage was solemnized without any publication of banns, licence, or dispensation previously obtained, and that it was had without the knowledge of his mother or her husband, but whether he had any guardian she does not know. She says that after the solemnization of the marriage they quitted Furnes, and proceeded together to Nieuport, where they staid all night, and on the day following went to Bruges, and from thence to Lisle, and returned to St. Omer about a week after they had quitted it. She says that during the journey from Furnes to St. Omer, it was proposed by this respondent to Edmund Pytts Middleton that, on their return to St. Omer, no notice whatever should be taken by either of them of the aforesaid marriage so had and solemnized between them, and accordingly they did not take any notice of such marriage, that they never lived or cohabited together, nor owned and acknowledged each other as man and wife at St. Omer, but that each of them lived as before, apart, in their respective boarding-houses." She further says, "that she did not return to England, but remained at St. Omer until about the 31st of May, 1777, when she left that place and arrived in England on the 3d of June following, and she believes that Edmund Pytts Middleton remained at St. Omer until about the month of October, 1777, when he also returned to England; that after that he frequently visited the respondent, and at such times often earnestly requested her to keep the marriage a secret, alleging that he had reason to believe that Edmund Pytts, who was his uncle and godfather, **[440]** and intended to give him a considerable fortune, would be much displeased and offended at him, in case he should hear that he was married to this respondent, and therefore she continued to keep the marriage a secret from the said Edmund Pytts; and this respondent believes that about the beginning of 1780 the said Edmund Pytts Middleton went to the East Indies and has ever since resided there, and that she has always remained in England, and considered herself and claimed to be the lawful wife of Edmund Pytts Middleton; and that since he has been in the East Indies she has written and sent several letters to him there, expostulating with him on his cruel and neglectful behaviour towards her, and entreating him to remit her some reasonable maintenance as his lawful wife, but this responent never received any answers to either of the said letters."

Mrs. Catharine Hansard, the mother of Mr. Edmund Pytts Middleton, says, "that about October, 1777, her son returned from France to England, and continued from that time until the beginning of 1780 constantly resident with her and her husband, and during that time, the defendant Martha Janverin never lived or cohabited with her son as husband and wife." Mr. Hansard deposes to the same effect.

The libel, after stating the facts of the case, pleads, "that the town of Furnes was one of the barrier towns of their High Mightinesses the States General, and that there was a church or chapel there for the use of the garrison; and further states that by the laws and ordinances of the States General in 1580, and by the resolutions **[441]** dated March 13th, 1656, relative to the edict published by the Emperor Charles the 5th in 1540, all of which are now in full force, it is declared 'that marriages can in no way stand valid, without the previous knowledge of the free state of the contracting parties, and without the consent of the fathers, mothers, parents or guardians of the parties, and that after publication of banns on three several Sundays in the place of the parties' domicil, or legal dispensation of such publication being otherwise procured;' and that by the decree of the Council of Trent made in 1563, which is received and obeyed

as law in all the Austrian Low Countries, 'All marriages which are not solemnized by the proprius parochus, or priest of the place, where the parties or one of them, have their residence, or by some other priest with the licence of their own priest, or of their ordinary, are declared to be null and void;' and that by the laws of their High Mightinesses, as well as of the Austrian Low Countries, the said pretended marriage of Edmund Pytts Middleton and Martha Janverin was and is null and void."

In proof that this is the law of the United Provinces, to which this garrison in March, 1777, was subject, they have examined four gentlemen, who are advocates, practising in the Court of Judicature at the Hague, and have been so for twenty years; and they have also examined four gentlemen practising in the Courts in Austrian Flanders, both with respect to the law and the governing powers, under the circumstances pleaded in the libel; and they conclude, "that by the laws of the United Provinces of the Low Countries, and the ordi-**[442]**-nances of the States of Holland in 1580 and 1656, there is no doubt but that the marriage is null and void on three grounds; first, on account of the incompetency of the minister who celebrated the same; secondly, on the minority of Edmund Pytts Middleton; thirdly, from the want of publication of banns."

It has, however, been said that evidence of opinion that such is the law is not that evidence of the law which the Court ought to require, but that it ought to have had an authentic exemplification of the laws and ordinances of those countries. Now, I think, to obtain that at this time of day would not be a very easy thing, the decrees of the Council of Trent are in print, and in every body's hands, and the particular parts of the laws, which are referred to by the advocates, are copied into their opinions; therefore, I think there is every authentication, and every ground the Court can have, to believe that such ordinances and such laws as they mention, were actually by proper authority published, and were at the time in question valid and in force. To be sure, the best evidence would be a sentence of a Court of Judicature of those countries. In the case of *Scrimshire* v. *Scrimshire* (vide supra, p. 395) that was obtained; but in this case that would be impossible, because neither of the parties resided in the place where the marriage was performed, even for a day, but came away directly; more particularly, considering how long it is since the transaction passed, and the revolution which has taken place there, it would have been impossible to have obtained any sentence of a court of judicature on the subject.

[443] It, however, seems to me that the opinion given in this case by eight gentlemen well acquainted with the laws of those countries (and they have stated themselves, upon their oaths, to have been in official situations which they describe) is the best evidence that can be given, of what was the law of those countries at the time of the transaction; and I am convinced by it, that by the decrees of the Council of Trent and the laws of Holland, to which this garrison was subject, the marriage in question is absolutely null and void, as is declared by those persons.

It is, however, contended that admitting the law to invalidate the marriage in those countries, yet that is not the law by which this case is to be decided in this Court. It is not the lex loci where the marriage ceremony is performed, which is to determine the question, but you must find out some other law, and that is declared by the counsel for Mrs. Janverin to be the law of England. Now, in respect to the lex loci having been adopted as a rule, I think the case of *Compton* v. *Bearcroft* proves it very strongly. In that case the Court of Delegates (vide infra, p. 444) affirmed the rejection of the libel which was given in against the marriage on different grounds, as I have understood, from those which were taken in the Court of Arches, and because the marriage was a good marriage in Scotland, and if all facts pleaded in the libel were proved, the marriage could not be pronounced void under the marriage act; in which it is expressly declared that it shall not extend to Scotland On those grounds it was, as I have understood, that the Delegates rejected the libel, the case of that marriage was therefore determined **[444]** by the lex loci. Those persons having gone to Scotland, and been married in a way not good in England but good in Scotland, and not affected by the marriage act were considered to have contracted a valid marriage.*

* There is a difference in the account of that judgment as explained here, and supra, p. 430.

The form of pronouncing judgment in the Court of Delegates, without any

But the case of *Scrimshire* v. *Scrimshire*, which was determined in 1752, was a direct and positive sentence upon the merits of the case which can-**[445]**-not be distinguished from the present, except by the different residence of the parties. Mr. Scrimshire was a bachelor of the age of eighteen, and Sarah Jones of the age of fifteen; and being at Boulogne in France they were joined together in holy matrimony according to the rites and ceremonies of the Church of England. That cause began as a suit for restitution of conjugal rights. An allegation was given in reply, "that his mother had been in France for some time; that he, about thirteen or fourteen days before, went over to visit his mother, and there met with two Irish officers, by whose interference this marriage was procured. That in order to obtain a sentence against the marriage, a suit of nullity had been promoted by his mother at Boulogne; it went on for a short time there, but the Court refused to call in what is called the act of marriage. That in the year 1749 an appeal was **[446]** carried to the Parliament of Paris. That there two sentences were obtained: one in a criminal form, by which the minister and the officers were condemned for nine years to the galleys; and another pronounced the marriage to be null and void." In the suit here, the validity of the marriage was thus brought in question, and the Court pronounced against it and dismissed Mr. Scrimshire. It cannot be denied that this was a sentence which proceeded entirely upon the laws of France. If the marriage had passed in this country in the year 1752, celebrated by a priest of the Church of Rome, according to the ceremonies of the Church of England, it would then have been a good and valid marriage by the law of England; but the law of France being different it was set aside. It is said that was a single case, resting only on the opinion of one Judge, and that there was no appeal. But I also remember to have heard that the judgment was founded on great deliberation, and that Lord Chancellor Hardwicke

declaration of the grounds of the sentence, may have given rise to a different construction of the opinions of the judges on this point. The libel, which is here introduced, will shew the ground on which the nullity was originally alleged, on the principle of holding English subjects, going to Scotland to evade the provisions of the marriage act, to the consequences of that act. That appears to have been the gist of the libel and of the arguments, so far as they have been traced in a very imperfect note. When that point was overruled, and the libel deemed inadmissible on that ground,(*a*) in which the Court of Delegates concurred with the judgment of the Court below, it might not be material to declare whether the law of England, as explained by Sir G. Hay, or the law of Scotland, as here stated, was supposed to be operative. In this manner the difference of construction may have arisen. The libel pleaded, "The marriage act, and the minority of the lady, and want of consent, and that on 13th March, 1762, a marriage was had and performed in the dwelling-house of Thomas Huddlestein, a cook and confectioner at Dumfries in North Britain, by Richard Jameson, the minister, or pretending himself to be the minister of the English chapel at Dumfries, who then lodged in the house of Thomas Huddlestein, in whose lodging-room the marriage was so performed between Edward Bearcroft of Droitwich, in Worcestershire, and Maria Catharine Compton of Hartpury, in Gloucestershire, without publication of banns, and without any licence being had and obtained for the solemnization of the said marriage from any person having authority to grant the same, and that neither E. Bearcroft nor M. C. Compton ever was resident in any part of North Britain. But she the said M. C. Compton, in the beginning of March, 1761, went from the house of John Dalby, her testamentary guardian in Berks, to pay a visit to her brother, Sir William Compton at Henslip, in the county of Worcester, and he dying, she left that place and went to her mother at Hartpury, in the county of Gloucester, and from thence went, unknown to John Dalby and without his consent, and without the knowledge of her other testamentary guardians, with E. Bearcroft, on or about the 6th March, 1762, to Dumfries to be married; and that they were married there as aforesaid merely to evade the laws of this realm, and returned into England on the same day, and proceeded to the house of E. Bearcroft at Droitwich, and were never in North Britain but during the time of the journey, and for the purpose of the marriage" The certificate of marriage was also pleaded in these words:

(*a*) Arches, 16th Feb, 1767. Libel rejected by Sir George Hay, sentence affirmed by Court of Delegates, 4th Feb., 1769. Judges Delegate, Gould, J., Perrott, Baron, Aston, J., Drs. Ducarel and Clarke.

was consulted on it. In the case of *Butler* v. *Freeman* * Lord Hardwicke is reported to have said, "that if the marriage is not good by the law of the country where it is celebrated, it is not good at all," and the reporter adds that it had been lately so determined in the Court of Delegates, but I apprehend that was a mistake in the reporter, mentioning the Court of Delegates for the Consistory Court.

Upon this ground I think the true principle to be that, if the marriage is had abroad, and is not good there, as being contrary to the laws of the country in which it is had, it is not to be held **[447]** good by the law of this country. It is said that there is a difference between this case and that of *Scrimshire* v. *Scrimshire*, that there was in that case a residence of one of the parties fully established; whereas these parties were only three days in the country where the marriage was performed, that in that case they were English subjects, with a considerable property in England, where they were to return for the enjoyment of all privileges and rights under the marriage so celebrated. But the residence of the young man had not been of fixed continuance, but was for a few days only, though his mother and family had been resident at Boulogne about two years before the transaction. The young lady had been there only eighteen months and for education, therefore I do not see that this circumstance of residence makes any substantial difference from the present case.

It is however contended that it does; and that these parties having been but a few hours in the place, that will not give the law of the place a power over them, and therefore the lex loci either of Flanders or of Holland will not have any effect upon the present case. Then what will? Can it be said that it will require some new rule to affect it? If this marriage is not to be judged by the laws of Flanders or of Holland, then by what law is it to be judged? The counsel say "it must be judged by the law of England." What was the law of England in 1777? that if a marriage is had without the consent of parents or guardians, or publication of banns (either party being a minor), it is null and void by the marriage act. I know no other law of England on the subject since 1753. But it is said that act cannot take effect in this case, because **[448]** there is an express exception that it shall not extend to Scotland, or any marriage had abroad. The reason of the exception as to marriages had abroad is perfectly clear. The act could not extend to them; for if it were held that an Englishman abroad cannot marry without the solemnities required by the act, he could not marry there at all, for it is impossible to have those solemnities observed in a foreign country. But the exception with respect to Scotland was of another kind: I am old enough to remember the passing of that act; and I recollect well that there was an intention at the time of introducing another Act of Parliament, which was to extend to Scotland; but by the Act of Union the state of religion is not to be touched, it is to remain exactly as it was, and therefore there was a difficulty arising out of the Act of Union in applying the marriage act to that country.

The only law of England as to marriage is the marriage act: it cannot by that law be said that a marriage is good which is not had according to it. It is true that a marriage had abroad is not within that act. But it does not follow from thence that it is good by the law of England. For, as I have before said, I know of no other law of England but that. And the question will be whether it be good by the law of the country in which it was celebrated. I am clearly of opinion that this marriage, which was had at Furnes, in the manner I have stated, does not amount to a valid and legal marriage. It is not so by the law of the country in which it was celebrated, it is not so by the law of this country, and therefore I pronounce it to be null and void.

"I certify that I married after the manner of the Church of England, Edward Bearcroft and Maria Catharine Compton. (Signed) J. Jameson, minister of the English Chapel at Dumfries." The prayer of the libel was "that the marriage might be declared null and void, pursuant to the said act for clandestine marriages."

* Ambler, 313; see also a similar dictum of Lord Hardwicke long before, A.D. 1744, 1 Atkyns, p. 50.