REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

Ecclesiastical Courts

AT

Doctors' Commons;

AND IN THE

HIGH COURT OF DELEGATES.

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Sic unum quidquid paulatim protrahit ætas
In medium, Ratioque in luminis eruit oras

LUCRETIUS, LIB. V.

VOL. I.

CONTAINING CASES FROM HILARY TERM, 1809, TO HILARY TERM, 1812, INCLUSIVE.

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1818.

CONSISTORY COURT OF LONDON.

1812, *Hilary Term*,

POUGET *v.* TOMKINS, falsely calling herself POUGET.

Jan. 24.

The marriage of a minor annulled, on account of a fraudulent publication of banns.

WILLIAM PETER POUGET was born at Surat, in the East Indies, on the 5th of May, 1794. —In the month of May, 1810, his father, who at that time resided in Blandford-street, Portman-square, was informed by one of the servants in his family that his son had been married, in the preceding January, to Lucretia Tomkins, his grandmother's maid. Upon investigation, it was ascertained that the marriage ceremony had taken place in the church of St. Andrew's, Holborn, after a publication of banns, under the names of William Pouget and Lucretia Tomkins, in which they were both described as residing in that parish.—It was in evidence also, that an attempt had been first made to have the banns published in Highgate church: but, upon the names being delivered to the clerk, he asked if the parties resided in Highgate parish; to which the bearer of the paper on which the banns were written (a servant girl in Mr. Pouget's family) replied, "that she believed they did, but she did not know where." This answer not satisfying the clerk, no further steps were taken for their publication in that parish.

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JUDGMENT.

Sir WILLIAM SCOTT.

This is a suit brought by the father of William Peter Pouget to annul a marriage contracted by his son, on the grounds of minority,—want of consent, —and undue publication of banns.

William Peter Pouget was a minor at the time of the marriage, having been born in May 1794,— and married in January 1810, at St. Andrew's, Holborn;—his father's residence, and consequently his, he being resident with his father, was in the parish of Marybone;—his alleged wife was a servant in the family;—her age does not appear;— the letters exhibited from her shew her to have been an uneducated person.

The minor's name of baptism is William Peter; —it is proved that the name of William was merged in that of Peter, which was the only appellation in common use.—Maria Perkins says that he was scarcely known to have any other name, except by his very near relations;—she is supported in this by other witnesses;—his letters were generally subscribed Peter, and rarely William Peter Pouget; —in the letters of the party against whom the suit is brought she styles him Peter, and it appears that she always in mentioning him, termed him Master Peter; so that it is clear, however William might compose a part of his baptismal name, the other had obliterated it in common use. The name of William Pouget would not describe him to most persons so as to notify him to be the person so described.

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By what preliminary measures the marriage was brought about does not appear;—nothing transpires before an attempt to publish the banns at Highgate, which miscarried. One of the witnesses carried the banns to the clerk at Highgate, who asked if the parties resided in the parish;—her answer implied that she believed they did not, and in consequence thereof the publication was declined.

It appears in this case, that the banns upon which the marriage afterwards took place at St. Andrew's, Holborn, were delivered by the minor;—a circumstance which would not take away the fraud, for that is charged to have been committed not on the boy himself,—but on the parental rights of the father;—and though the case might have been grosser if it had been proved that the party herself, who is proceeded against, had been active in giving the banns for publication, yet it makes no such a material difference that they were given by the boy himself, as to the fraud upon the parent.

The account which Mary Hemming gives of the marriage is, that the parties in her presence were married by the names of William Pouget and Lucretia Tomkins. The clergyman asked the name and residence;—he answered that his name was William Pouget, but he was confused in his answer as to his residence. The brother of the woman answered concerning the residence;—he probably, therefore, was the principal mover in the business, although this does not distinctly appear;—but it is clearly established that the banns were published in the name of William Pouget,

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omitting the Peter,—that the father was totally ignorant of the marriage,—and that he was not informed of it till some months afterwards, when he was both surprised and grieved.

The act recites the general inconvenience which had arisen from clandestine marriages, and professes to prevent it in future.—For this purpose it directs a notice in writing of the true Christian and sirnames, and residence of the parties, to be given in writing to the minister seven days before,—otherwise he is not obliged to publish them;—but he is not forbidden to publish them, though not so delivered;—and I suppose that this regulation respecting the time of giving the names is not very generally observed in practice.

It is the clear intention of the act that the true names should be published; it was not necessary to insert this in the act. It had already directed that true names should be given in for publication; and if it had not, still if the true names are not published, it is no publication;—no notice is given, and there is no opportunity afforded, to persons interested in preventing the marriage, of knowing what is about to take place;—no one can allege any impediments to a marriage between persons not known by the description. It has been held, therefore, from the case of *Early* v. *Stephens* (*a*) downwards that a publication in false names is no publication;—to hold otherwise would be contrary to common reason, and to the whole intention of the act.

(*a*) *Early* v. *Stephens*, Consistory Court of London, 1785.

There being then a variation in the name here, the question comes whether the variation is sufficient to nullify the marriage. The true Christian name is William Peter;—in strictness, all baptismal names should be set forth,—for in strictness all compose but one Christian name.—I understand it is so held at common law in a plea of abatement on account of misnomer. In proclamation of banns, therefore, all names should be published;—for all make but one name, and the party may be known by one to some, by another to others;—at the same time I should be afraid of going the length of saying the proclamation would be vitiated in all cases by want of this full enumeration;—where there is no fraud intended on either side,—the the mere omission of a dormant name by accident, or negligence,—all parties interested knowing the fact,—and the identity of each of the individuals,—and all circumstances being clear of all purpose of imposition, I think it would be an unreasonable rigour to hold a marriage void for such an omission alone.

But where the omission is known to both,—where it is intended by both as a fraud on a third party,—it is not to be deemed a mere omission;—but a suppression to avoid the rights of another, and to defraud them. In such a case I think the Court would be called upon to enforce the strict letter of the law, and by so doing to maintain the spirit of it.

It has been argued,—that it is provided in the act that, after the marriage has taken place, the residence shall not be inquired into for the pur-

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pose of annulling the marriage.—This, however, shews that other points may be inquired into for that purpose,—and amongst such points is the publication of banns on which the marriage has taken place.

Thinking, therefore, that the Court is called upon to act on these principles, I have to consider the evidence, in order to see whether it is a casual omission, and not intended to mislead, or if it is a fraudulent suppression in order to effect a marriage which would not otherwise take place.—If one name is dormant, and that is omitted, it seems that it would be no more than a fair presumption that it was accidental,—for where could be the use of omitting an unknown name?—But here the name is omitted by which he was usually known and called in the family;—even by this person in her letters.—This can leave little doubt but that the concealment was intentional, and for the purpose of deceiving the father, or the friends of the family, who might convey the information to him;—and this appears to be a very deciding criterion between the accidental case, and the fraudulent, unless other circumstances of greater weight countervail its effect, and give the transaction, as they possibly may do, a different character: in the present case, it rather appears to the Court that other attending circumstances confirm the impression of fraud which the suppression of the name had already affixed to it.

The banns were actually published, and the marriage celebrated in St. Andrew's, Holborn, the real residence of the father being in Marybone.—

An objection was taken on the admission of the libel which stated these facts, that it was against the provisions of the statute to inquire into the residence in order to annul the marriage on that ground. The answer given that the pleading of this circumstance was not used to invalidate the marriage directly, but only as a support to the charge of fraud, did not entirely satisfy the Court; —which, however, admitted the libel with some hesitation, reserving to itself the power of further considering the admissibility of any evidence that might be adduced upon that very point. But it rather appears to me, that another circumstance, though of the same kind, which this case presents, is in a less degree liable to the objection. I mean the fact upon which this marriage was not obtained, the attempt to procure a fraudulent publication of banns at Highgate, which proved ineffectual:—for the publication was refused, because the parties could not vouch for their residence in that parish; —and nothing followed. This, I think, stands more clear of the objection upon which the Court still retains its doubt, whether it could, consistently with the act of parliament, admit any averment that the marriage took place in a parish which was not the parish of the parties, though that averment was introduced only as a proof of fraud,—and not as a ground of nullity,—for here no such marriage followed from that act;—it stands as a naked attempt of fraud, no consequence following from thence,—and being such an attempt of fraud, so qualified, hardly comes within the prohibitory

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language of the statute. It will not disturb a marriage effected by its means, but is a substantive attempt of fraud on the part of these persons,—not immediately and directly contributing to the present marriage;—and as being so,—is more free from the objection to which it would be liable if it were. If so, here is a direct evidence of a fraud auxiliary to the imputation of fraud employed in the immediate transaction.

The probable disparity of years is another subsidiary circumstance;—the boy is a school boy of sixteen years of age, the age of the other party does not appear;—but certainly the fair presumption is, that it exceeded that age.

Upon the joint effect of all these circumstances, I think myself justified in pronouncing that the publication containing this omission was fraudulent and false, and that the marriage had thereon is null and void.