

marriage ceremony is not fatal to the validity of the marriage." (*Catlerall v. Catlerall*, 1 Rob. Ecc. Cas. 580.)

"Directions as to the manner, and even prohibition under a penalty other than nullity, do not necessarily imply a nullity." *Per* Lord Blackburn, *Lauderdale Peerage*, 10 A.C. 748.

"Unless the statute expressly declares a marriage contracted without the necessary consent (of parents) a nullity, it is to be construed as only directory in this respect. (26 Cyc. 835.)

"All such requisites as banns, etc., are formal, and a marriage is void only when their deficiency is known to both parties to the ceremony." (Brown and Watts, 101.)

"Prohibitory words have never been held to create a nullity, unless that nullity is declared in the Act. (Brown and Watts, 102.)

"The consent of parents has been held to be directory only, and its want does not render the marriage celebrated without it invalid." (*Rex v. Birmingham*, 8 B. & C. 29.)

The last-mentioned case was relied upon by the Divisional Court in deciding *Peppiatt v. Peppiatt*. The judgment in *Rex v. Birmingham* was based on the change in the statute law made by 4 Geo. IV. ch. 76. Lord Tenterden, C.J., said, in effect, that 26 Geo. II. ch. 33, sec. 11, had expressly enacted that such a marriage as this was void for lack of the father's consent, the husband being a minor, but that it had been repealed by 3 Geo. IV. ch. 35, sec. 1, because it had been productive of great evils, and then 4 Geo. IV. ch. 76, sec. 14, in requiring parental consent to the marriages of minors, did not say that without it they should be null and void, while sec. 22, in enumerating the causes which made ceremonies void, did not include lack of parental consent. Therefore, he held the marriage valid. It should be remarked also that the Court was dealing with the interpretation of a provision applicable to all marriages of minors, with or without consummation, and in which the legitimacy of children might be involved. It does not appear that the decision in *Rex v. Birmingham* is applicable to the circumstances set forth in sec. 36 of the Marriage Act. No such changes have taken place in provincial as in English legislation; in the Marriage Act the marriage of minors not followed by consummation is dealt with. The legitimacy of children cannot be at stake in such cases.

XII. THE SECTIONS TO BE INTERPRETED.

Sections 15, 19, 21 and 36 of the Marriage Act read (in part) as follows:—

"15. (1) Where either of the parties to an intended marriage not a widower or a widow is under the age of eighteen years, the consent of the father, if living, or, if he is dead, of the mother, if living, or of a guardian, if any has been duly appointed, *shall be required* before the license is issued, or before the proclamation of the intention of the parties to intermarry is made."

"19. (1) Before a license or certificate is issued, one of the parties to the intended marriage shall personally make an affidavit, Form 3, before the issuer or deputy issuer, which shall state (certain things set forth)."

"21. (1) Where the person having authority to issue the license or certificate has personal knowledge that the facts are not as required, by sec. 15,