

THE MARRIAGE LAWS.

of dowry (the general features of which as they existed in the Roman law we have described), or the law of the separation of property, the Code providing the consequences to result from the adoption of any one of these systems.

Nor is it necessary to adopt one of them in its entirety, but they may be modified or blended to suit the views of the parties. In the absence, however, of any declaration the law of community, which may therefore be deemed the Common Law of France, governs. "Under this law, the husband and wife become joint owners of all the personal property which they possess at the time of the marriage, as well as of all such property as they may acquire during the marriage, by succession, or even by gift, unless the donor express the contrary. They are also joint owners of all the real property purchased during the marriage; but such real property as is acquired by succession or gift, unless the donor declares otherwise, does not fall into the community. The husband has the sole management of the property of the community, and may sell or charge it without the concurrence of the wife; he has also the management of all the property of the wife which is excluded from the community, but he cannot alienate such of her real property as is excluded, without her consent; nor can he alienate by will the property that is included, beyond the share of it to which he will be entitled on the dissolution of the community. At the death of either of the parties, an account is taken of the properties and of the liabilities of the community, and the surplus is divided equally between the survivor and the representatives of the deceased."

Under the dotal system, "the husband has, during the marriage, the management of all the property in dowry, but he cannot, either alone or conjointly with the wife, alienate or charge any of the real property, unless provision has been made for this purpose in the marriage contract. The wife may, however, under certain conditions, make provisions thereout for the children of the marriage, or of a former marriage, and the Court will also permit the property in dowry to be sold, in certain cases, such as for releasing the husband from prison, &c. The wife has the management and enjoyment of such part of her property as has not been settled in dowry, but she cannot alienate nor sue, in respect to this property, without the consent of her husband; or, in the event of his refusal, without the permission of the Court."

Where the parties stipulate by their marriage contract that they will be separate in property, the wife retains the entire management and enjoyment of her property, both real and personal. Each of the parties contribute towards the expenses according to the terms of the contract; if it is silent in this respect, the wife contributes a third of her income, though the Court may, in certain cases, order

a larger contribution. The wife cannot, by virtue of any stipulation, alienate her real property without the special consent of her husband, or of the Court, in case of his refusal; and any general authority for this purpose given to the wife, either by the marriage contract or subsequently is void. The community may be confined to mere gains, leaving each party his own property, or there may be universal community which will include real estate as well as personal. The mere declaration that the parties marry without community does not constitute the separation of property so called, in which last case, as we have seen, the wife has the separate control of her property in all respects, except that she cannot dispose of any real estate without her husband's consent. In a marriage declared to be without community, the wife has not the right of administering her property, or receiving the income, which goes to the husband to support the expenses of the marriage; the husband retains the administration of the property, movable and immovable, during his life, with the right of receiving all the personal property brought as her *dot*, or which accrues to her during marriage, subject to the restoration after the dissolution of the marriage or judgment of separation of goods.

In the Spanish law the community is confined to the acquets, and each party retains his or her own property, and is liable for his or her own debts. However, where there is no inventory made at the time of the marriage, and there is no other means of distinguishing what belongs to each party, the movables are considered as acquets, and subject to the rule of the community. If under the Spanish law the woman renounces the community before the celebration of the marriage, she is married under a rule equivalent to the rule of the separation of property and not of the French *régime* without community. The Spanish jurisprudence admits of a system similar to the French *régime* without community, *i.e.* a *régime* in which the wife has neither the advantages of community, nor those of the separation of property. But for this purpose it is requisite that such a *régime* be expressly stipulated in the marriage contract. The following are its consequences upon property. The wife has no share in the acquets, neither has she the administration of her separate property, whilst in the absence of such stipulation she would retain that administration, as in the French system of separation of property.

The wife's dowry may be given her either by her parents or by third parties, and either before or during coverture. Parents are bound to furnish a dowry equal to the "*legitime*" (the portion the party would by law be entitled to in the parents' fortune in case of succession), deducting therefrom the property the bride may possess in her own right. The obligation does not exist if she marries without their consent. All the property the