

THE MARRIAGE LAWS.

tions of the Royal Commission. Though, for the reasons incidentally suggested, I cannot but think that the rights of the weaker sex require the return, pure and simple, to the old common law, very much I believe would be gained by providing, as is proposed, that no marriage celebrated by a minister of religion duly authorised or by a civil officer shall be declared void, for a non-observance of the conditions prescribed for the prevention of clandestine, illegal marriages; and that the preliminary conditions relative to residence, consent of parents, declarations required from the parties, shall only be directory.

Where marriage takes place in foreign countries, and especially between persons of different nationalities, important questions of international law present themselves, about which the jurisprudence of England and America is not in accordance with that of the continent. While all agree that the law of the place of celebration must be observed, the French and other countries, where the rule of the personal status prevails, subject their citizens to their own laws, when contracting marriage abroad. Frenchmen, who have not lost their nationality, have two conditions to perform: they must make the publications in their *commune*, and obtain the consent of their parents. Neither the English nor American law pays any regard to these extraterritorial requirements; and the consequence is, that cases exist where parties have been validly married in England or the United States, whose marriages are null in their own country.

The impediments thrown in the way of marriages abroad have induced the passage of Acts of Parliament, authorising marriages at embassies and consulates, the validity of which, as derogating from the sovereignty of the country where they are solemnised, is considered by the Royal Commission as doubtful. It would seem that this is a matter which requires a conventional arrangement, and so far as the United States and England are respectively concerned, it naturally falls within the scope of legislation required by the arrangements recently entered into by them, in regard to naturalisation and its incidents.

Though publicists are pretty generally agreed that it is the law of the husband's domicile or the matrimonial domicile, and not the law of the place of the celebration of the marriage, which, in the absence of any express contract, is to govern the respective rights of the parties, at least as to personal property, there is no general accordance between them as to the effect of a change of domicile after marriage.

In Story's time, it would appear that no case had arisen in the English courts upon the point, as to what rule ought to govern in cases of matrimonial property where there is no express nuptial contract, and there had been a change of domicile. He refers to a case (*Saver v. Shute*, 1 Anstr. 63) where the Court of Chancery adopted the law of the

actual domicile, though to the prejudice of the equitable provision which that tribunal was in the habit of making in favor of married women domiciled in England.

The actual domicile is the law of Louisiana now confirmed by Statute, as to all property acquired after removal into the state. And Judge Redfield, the commentator of Story, contends for it as the suitable rule in all cases. He admits, however, that the Court of Appeals of New York by a divided vote had decided otherwise, holding that the rights of property between married persons continue to be governed, notwithstanding a change of domicile, by the law of the place where the marriage was celebrated, and which was also at the time the place of the domicile of the husband. This is in accordance with the French rule.

There are two systems of law applicable, on the continent of Europe, to the rights of married persons, in neither of which is the individuality of the wife suppressed, as by the English Common Law, and though in many cases the husband exercises the administration during marriage, the wife's rights of property under one form or other are retained, and the law affords her protection against the improvidence of the husband.

On the continent where the question of woman's rights arises, it is necessary to decide between the dotal *régime*, which is sometimes purely Roman, and sometimes undergoes very extensive modifications, and the community of goods which is of German origin, and which also exists under various forms. Nowhere are these systems obligatory, except in the absence of express contracts, which in some countries may be made even after marriage. The right to such marriage contracts is entirely in accordance with the express terms of the law, and not, as in England and America, in apparent evasion of it.

By the Roman law, on which the modern dotal system is founded, the husband had the sole management of the dowry given by the father to a daughter on the occasion of her marriage, but as a general rule the husband's right to it ceased at the dissolution of the marriage, and it was restored to the wife or her family. Moreover the constitution of a dowry was in no wise essential to the validity of the marriage, and all the property not comprehended in the dowry was paraphernal, of which the wife remained proprietor and over which the husband possessed no rights. By the French law there is the most entire liberty of arranging the interests of the parties by contract, subject only to the condition that it shall not interfere with the general policy of France, and particularly as respects the law of succession. No provision can be made favoring primogeniture or affecting the equality of descent among children. Not only may special stipulations be made, but the parties may in general declare whether they will marry under the law of community, the law