

THE MARRIAGE LAWS.

of the said enactments which relate to the original jurisdiction of the Supreme Court, and of those which relate to its appellate jurisdiction and other matters: And the provisions respecting appeals to the Supreme Court, shall apply to judgments rendered before the days so appointed for the coming into force of the enactments relative to the appellate jurisdiction of the Court, provided the twenty days after the judgment, limited by section *twenty seven*, for giving notice of appeal have not elapsed, and that such notice is given within the said twenty days:—or, provided an appeal to the Queen in Council has been allowed, and that before the record in the cause has been transmitted to the Registrar of Her Majesty's Privy Council, and while it would be still competent to the appellant so to transmit the same, as having complied with all the preliminary requirements of the law within the periods limited for each, the appellant gives to the respondent, and files in the Court appealed from, a notice that he intends to appeal to the Supreme Court, and complies afterwards with all the requirements of this Act, reckoning such notice as the notice of appeal to the Supreme Court, mentioned in section *twenty seven*: and the security (if any) given by the appellant with reference to the appeal to the Queen in Council, shall in such case become void.

71. This Act may be cited as "The Supreme Court Act."

SELECTIONS.

THE MARRIAGE LAWS

OF VARIOUS COUNTRIES, AS AFFECTING THE PROPERTY OF MARRIED WOMEN.*

By THE HON. WM. BEACH LAWRENCE.

Marriage, according to Grotius and Blackstone, was always a matter *juris gentium*, and with the intercourse now existing between the different portions of the civilized world, and especially between the people of a common descent on the two sides of the Atlantic, every incident connected with it is of general interest. And no citizen of any country marrying abroad or coming to reside abroad after marriage can well know to what extent the laws of other countries on this subject may not be applicable to him.

Important, however, as the protection of the rights of property of married women is, the questions which concern her matrimonial status are of paramount consideration. Marriage, though a contract, is a contract *sui generis*, and among its peculiarities is that it is impossible by rescinding it, after it has been once consummated, to restore one of the

parties to the condition which existed before the contract was entered into. The Common Law of Europe, and which is still the law of Scotland, by regarding every promise of marriage between persons of the age of puberty, followed by consummation, as constituting an irrevocable contract, protected the feebler sex against the stronger, and was the ægis of woman's honor.

The decision rendered by your House of Lords in 1843, declaring a person ordained by a bishop to have been essential by the Common Law of England to the validity of a marriage, it is unnecessary to say created the most profound amazement in the United States. As our law of marriage has no other basis than the law of England as it existed before the time of Lord Hardwicke's Act, if the interposition of a clergyman ordained by a bishop was necessary with you it could not, in the absence of any statutory regulations, have been less obligatory with us.

It is unnecessary to inquire as to the soundness of the decision in the *Queen v. Millis*, rendered by a divided vote of the House of Lords, and against which the eminent judge of the Ecclesiastical Court, Dr. Lushington, on the earliest occasion, so earnestly protested. Neither the solemnization by a priest, as contended for by the English Common Law judges, nor the decree of the Council of Trent requiring the presence of the curate and two witnesses to the verification of a marriage between Catholics, impose any additional restrictions on the parties in the contracting of marriage. On the contrary, the Council of Trent, whose professed object it was to establish a system which would prevent for the future scandals arising from the repudiation, by persons belonging to the Church, of clandestine marriages of which the proofs were wanting, refused to declare invalid marriages contracted without the ecclesiastical benediction. At the same time they anathematized all who should say that the marriage of children without the consent of their parents was null.

Constituted as human nature is, every restriction on marriage must operate to induce illicit connections, and such connections, as a general rule, must be based on a sacrifice of the middle and lower classes to the licentiousness of the higher. As it was well expressed by Sir James Mackintosh, the whole legislation of Europe on the subject of marriage has been a contest of patrimony against matrimony, though, viewed in this light, it is not a little extraordinary that the authors of the Code Napoleon, who had just proclaimed the equality of all citizens, should have referred as an authority for their articles on marriage to the edict of Henry II. of 1556, and to the ordinance of Louis XIII., which were professedly intended to prevent *mésalliances*. If the object of the Code had been to make lawful marriage an exceptional institution and concubinage the normal rule, no more effective

*The above is an authentic report of the speech made by Mr. Lawrence, in the discussion on the Married Women's Property Bill, at the Bristol Congress of the Social Science Association in October last.—*Ed. Law Magazine*.