

CURIOSITIES OF ENGLISH LAW.

This result seems to have been arrived at by easy stages. It was very early decided that a testator might reasonably hold out a pecuniary inducement to his widow to remain faithful to his memory, whether she had any children by him or not, and there is some authority in the early cases for supposing that sons had the like power of throwing obstacles in the way of the second marriage of their mother. It was, however, reserved for Lord Hatherly, when Vice-Chancellor, and the Court of Appeal, in the Chancery Division, to advance the doctrine as to second marriage by two important stages. Lord Hatherly (*Newton v. Mursden*, 2 J. & H., 356, 31 L.J. Ch. 690) in a very long and elaborate judgment, decided on the balance of authority, that any one may impede the marriage of a widow to the same extent as her late husband, and it has quite recently been held by the Court of Appeal (*Allen v. Jackson*, 1 Ch. Div., 399), reversing the decision of Vice-Chancellor Hall, that the second marriage of a widow is not more favoured than that of a widow. In the entire want of sympathy with second marriages evinced by the the Judges, they are not altogether in accord with the Civil Law, which only countenanced restraints on second marriage where the interests of the children of the former marriage might be affected. We confess that, in our opinion, the ancient law might have been followed with advantage. It seems a little hard that persons whose first marriage has not been attended with the natural result should be restrained from contracting a second, particularly, as a learned Judge pathetically observed, where the surviving party is still of an age to do good service to the State by the procreation of children. We are aware that there exists some diversity of opinion with regard to the precise degree of merit attaching to such a service, but without entering into that delicate inquiry, it is enough for us to suggest that most of the objections to the marriage of childless widows and widowers apply equally to first marriages.

The Court does not look with any disfavour upon conditions restraining marriage without consent where such conditions are deemed reasonable, and the judges have felt no difficulty in upholding the validity of conditions whether precedent or subsequent requiring the

consent of trustees to the marriage of a legatee under age, indeed it has been held by the Lords Justices (*Younge v. Furze*, 8 D. M. & G., 756), that a testator may legally declare a forfeiture upon the marriage of his daughter (and we presume of any other woman), *with or without consent*, under the age of 28. This seems a strong decision, and under the circumstances, the testator having himself, shortly before he died, consented to the proposals of the young gentleman, subject only to his daughter's approval, it was particularly hard on the legatee. Even in the absence of any special element of hardship, we think a condition prohibiting the marriage of a woman under 28 can scarcely in fairness be called a reasonable condition. We can quite understand that to elderly gentlemen like the Lords Justices, who were perhaps at the age of 28, only in the first struggles of their professional career, that age should savour of extreme youth, but they should remember that girls are commonly placed in the way of receiving proposals of marriage at the age of 17 or 18, and that to prolong for ten years the inconveniences of an engagement when they might at once be put an end to by the nearest parson, much to the satisfaction of all parties, is indeed a serious responsibility.

But although a testator may prohibit his daughter, under pain of pecuniary penalties, from marrying under the age of 28 at his own absolute discretion without giving any reason whatever, it would appear from the case of *Morley v. Renoldson*, 2 Hare, 579, that he might not altogether prohibit her from marrying even though he gives what most people would consider a good reason for the prohibition. In that case the testator purported to prohibit his daughter from marrying on the ground that she was suffering from nervous debility, which totally unfitted her for the control of herself, nevertheless the prohibition was held to be void. The evidence indeed went to show that the testator was mistaken in his estimate in his daughter's state of health, but the judgement of Vice-Chancellor Wigram goes the length of affirming that nothing short of an absolute incapacity to contract marriage, such as would in itself suffice to render the ceremony void, justifies a condition in general restraint of marriage. Our sympathy in this case is with the tes-