

tage, that such marriages shall be good or not, according to the laws of the country where they are made. It is of equal consequence to all that one rule in these cases should be observed by all countries, that is, the law where the contract is made. By observing this law no inconvenience can arise, but infinite mischief would ensue if it is not . . . The children would be bastards in one country and legitimate in the other."

This old construction of the *jus gentium* has yielded in most countries to the modern view that prohibitions imposed by the national law of a State are incapacities which follow its citizens in whatever country they may marry, and that foreign Courts are entitled to apply the *impedimenta dirimentia* of their own law to the question whether a valid marriage has been contracted abroad(11). Art. 1 of the Hague Convention of 1902(12), expressly provides that all conflicts arising out of marriage are determinable by the national law of each of the spouses, unless that law refers to another law, and this principle has been incorporated in the systems of most nations, including France, Germany, Hungary, the Netherlands, Italy, Portugal, Spain, Roumania, Denmark, Sweden, Norway and Russia(13). All marriages, therefore, contracted abroad by citizens of these countries into which they would be incapable of entering at home, will be treated as null whenever they come under the jurisdiction of their national Courts, notwithstanding their validity in the country in which they were celebrated.

Even in the matter of the form of the marriage, as distinguished from capacity to enter into it, although the *lex celebrationis* is almost universally accepted, the Hague Convention makes a special reservation of the right of each State to which the parties belong, if its law requires a religious ceremony, to refuse to rec-

(11) Burge's Colonial and Foreign Law, vol. 3. pp. 246, *et seq.*

(12) Hague Convention on Marriage Law, 1902 (ratified June 13th, 1902), English translation in appendix to Mehl & Kuhn's "International Civil and Commercial Law," 1905.

(13) France (Code Civil, arts. 3 & 170); Germany (Introd. Law, art. 13); Hungary (Law of 1894, art. 103); Netherlands (Civil Code, art. 138); Italy (Code Civil, arts. 100, 102); Portugal (Code Civil, art. 152); Spain (Law of June 18th, 1870, art. 141); Denmark, Sweden and Norway (see 1901, Journal du droit Int. Prive, p. 197, 1077); all cited by Burge at p. 247 (n). For Russia, see Special U.S. Report on Marriage and Divorce, 1909, p. 383.