

PRESENT STATE OF THE MARRIAGE LAW.

only, may solemnize marriage between persons who are not under legal disqualification. Passing over the provisions of law with regard to the necessity for a license, or its equivalent by publication "once openly, in an audible voice, either in the church, chapel, or meeting-house, in which one of the parties has been in the habit of attending worship, or in some church, chapel, meeting-house, or place of public worship with which the minister or clergyman who performs the ceremony is connected, &c.," we think it not without profit to point out the presumptions which flow from this state of the law, and its manifest defects. It cannot be denied that the canon law of England was introduced in this Province by the Constitutional Act—that by the provisions of 33 Geo. III, ch. 4, Presbyterian, Lutheran and Calvinist ministers were allowed to celebrate marriage between certain persons, provided they were not under any legal disqualification; then 11 Geo. 4 ch. 36, confirmed marriages previously celebrated of persons not under canonical disqualification, and authorized ministers of certain denominations to solemnize marriage between persons not under legal disqualification. Subsequently other acts were passed which are found referred to in C. S. U. C. ch. 72 and R. S. O. ch. 124, from an analysis of which it will be seen that ministers of religion of all the various denominations have now the exclusive right, under certain restrictions, to solemnize the ceremony of marriage between persons under no legal disqualification to contract such marriage. In other words, they are officers of the law to whom is committed the duty of such solemnization, and of duly returning the same for public registry.

There is only one exception to the foregoing rule, and that is set forth in the 20th section of the existing statute, which provides that every marriage duly solemnized between members of the religious society called Friends, or Quakers, according to their rites and usages, shall be valid,

and all duties ordinarily imposed upon a clergyman are, with regard to such marriages, to be performed by the clerk or secretary of the society or of the meeting at which the marriage is solemnized.

Thus we find that, with the exception just referred to in favor of Quakers, every person desirous of being married to another, whether he or she belongs to a Christian denomination or not—whether or not a Deist, Atheist, or freethinker, must *ex necessitate* submit to the rites of a Christian church, and be married by one of its regularly ordained and recognized ministers, or else not be married at all.

That clergymen and ministers of the denominations, other than the Church of England and the Roman Catholic communion, were in the eye of the law regarded as officers of the law is manifest, because before acting as such they were required to present to the Court of General Sessions of the Peace the proof of their ordination and appointment, and like other public officers on their appointment, on assuming the discharge of their functions of office were obliged to take the oath of allegiance. This, however, was regarded as a stigma, because clergymen of the Churches of England and Rome were not required to pass through such an ordeal, but were permitted to solemnize marriage *ex officio* by virtue of their orders, and therefore the pre-requisites of attending the General Sessions and taking the oath were dispensed with by law.

The loose manner in which marriages are now solemnized by these officers of the law is too notorious to require much comment at our hands. We may, however, refer to the many instances in which ministers have performed the marriage ceremony between mere children, who were obviously too young to be able to give their consent to a legal marriage.

In one of our western counties this most reprehensible practice has been severely censured by the Judge in his charge to the Grand Jury. We will close what we have to