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## LAWS REGULATING THE FORMS OF MARRIAGE IN THE UNITED STATES.[1]

In the United States marriage is not a Federal question, but one over which the States and Territories have control under civil regulations immemorially understood, or through special legislation. The *mode* of solemnizing marriage in the State of New York is not given in any existing statute, and it has been thus remitted to the usage and custom there. No one cavils at the law merchant with similar sanctions, and marriage law, so indicated, has equal claim to due deference. Prior to 1690, its form had been clearly defined, and the usage exacts the intervention of some judicial officer, or some religious formula.

The solemnization of this civil contract was a cardinal idea with primitive colonists along the entire coast-country of America, and according to the respective creeds of each body of settlers, regular ministers and priests were chosen to remain permanently in the exercise of their holy office. The earliest traditions and records alike prove that such ministers and priests claimed the

[1] The following article was prepared in the office of the Attorney-General of the United States, for the use of one of the foreign ministers, and has been kindly furnished us for publication.—EDS. AM. L. R.

marriage ceremony as a peculiar right. An Act of Parliament, passed in the time of the Commonwealth, on the 16th of August, 1653, authorized justices of the peace to marry, and this additional form, adopted in the English West India Islands, and the colonies, under the canon law, as well calculated to enforce decorum and order, has continued from the first settlement to the present time in many of the States and Territories. With a fixed religious idea, making some church ceremony preferable, public sentiment was modified under the influence of this act; but there has been no period of time, in this country, when loose admissions of parties, excluding all special form, could have reduced the rule of marriage to the low standard of the Scotch law.

The apparently easy way of organizing religious congregations and orders with corporate powers and privileges, might naturally create the impression that such acts of incorporation must have lessened the previous dignity conferred upon a marriage ceremony under established regulations. The inquiry has been made, "Whether there be any rules in the United States according to which new religious communities may *form themselves*, or if the formation of such be entirely *free?*" A conflict, as between the laws of thirty-four States and seven Territorial Governments in the United States of America, might be anticipated; but, with some inadvertent omissions, the answer may be so framed as to embrace the whole subject-matter of the inquiry. It has not been long since the Supreme Court of the United States was equally divided on a question of marriage law, arising under the laws of South Carolina and Georgia, and no opinion could consequently be given in regard to the necessity of a ceremonial as essential to a valid marriage: *Jewell's Lessee* vs. *Jewell*, 17 Peters's and 1 Howard's U. S. Reports. Bishop, a recent text-writer on marriage law, has misstated the law of Maryland, though his view has had the advantage of a very recent dictum of Mr. Justice GILES, in the United States District Court for that State. It had been previously maintained in Maryland, by Chancellor BLAND, that no marriage could be legal there without the intervention of a religious form, or the blessing of some clergyman. The Maryland case is about to

be brought before the Supreme Court of the United States on appeal, and this high tribunal may thus decide what constitutes marriage. All the restraints against evasions of marriage law have marked the legislation of Maryland from the earliest period of the settlement, and the license, as one of the preliminaries required in the Act of 1692, still keeps its place in the items of the public revenue. To suppose any light or trivial act sufficient for a valid marriage is alike disparaging to the Protestant and the Roman Catholic, the former, even while disavowing it to be a sacrament, having always placed it above ordinary contracts. This first Maryland Act of 1692,—4th year of William and Mary,—required all *ministers*, *pastors*, and *magistrates*, "who, according to the law of this Province, do USUALLY join persons in marriage," to use the *form*, "set down and exprest in the Liturgy of the Church of England." The very earliest collection of printed laws of Maryland known to exist, is that of 1700, from which the above has been taken, and it clearly recognises prior usage and custom. To this day, when a magistrate in any one of the States where it is permitted, ventures to perform this ceremony, it is a matter of order to follow some religious form of words.

But it has been apprehended that irresponsible and irreligious bodies, under the guise of legal corporations, may usurp the privilege of these ministers, pastors, and magistrates. Such attempts would be in fraud of the law. It need not be mentioned that entire freedom is allowed to every form of religious sentiment in congregations upholding the principles of the moral law. Every violation of good morals is a misdemeanor at common law, and every association, calling itself by some religious name, is not entitled, as of course, to corporate rights. There are conditions precedent, and it will be seen that these incorporated associations are far from being "free," in any objectionable sense of the word. The statute books of all the States, year after year, were so cumbered with *special* acts, incorporating religious, charitable, and literary associations, that general powers were so devised in one act as to leave special details for each in the respective by-laws

and regulations. Thus, on the observance of certain preliminary steps, religious communities have gained a legal right to acquire landed and other property; to use, convey, and transmit their property for corporate purposes; to have a corporate seal for verifying all acts, and thus to facilitate every transfer. Some of these literary and religious incorporations are very rich. Harvard University, in Massachusetts, and Trinity Church, in New York, are noted examples, the first almost coeval with the settlement of New England. King William III. is still remembered as a benefactor to Maryland, having endowed a free school at Annapolis, and the fund, so bestowed, survives yet under State legislation, for the education of youth at St. John's College.— "The Good Bishop of Lodor and Man" aided in establishing a public Latin school for Talbot county, Maryland, and what this best of prelates had so gathered and garnered, in after years, went, by a happy coincidence, to a neighboring College named of Washington. Since the Revolution, a growing distrust of wealth in these corporations had caused the amount of property to be held by each to be limited, and the annual income restricted. The quantity of land for each corporation is usually fixed in some provision of the charter, and out of greater caution the Legislature now usually reserves a right to withdraw at its pleasure all the privileges. The true objects of these associations must consequently be carried out in good faith, and to avoid mortmain, every legacy and devise for religious purposes are void, without the consent of the Legislature.

The formation of these religious communities, then, is not "free," and the conditions precedent for such corporate rights will show it more clearly. In Pennsylvania, for example, literary, scientific, charitable, or religious persons may unite in a corporation by drafting a charter, and submitting it to the Attorney-General of the State, that its lawfulness may be certified to the Supreme Court of the State. When this tribunal shall have approved its scope and tendency, the Governor of the State may then order the written instrument or charter to be enrolled. In this way only can persons in Pennsylvania be formed into a cor-

poration. As amendments from time to time may be desired, a like scrutiny follows for further sanctions. The by-laws, rules, and ordinances of such literary or religious bodies must not be repugnant to the Constitution of the United States or laws thereof, to the laws of Pennsylvania, or to the instrument for incorporating these persons, after having been subjected to all the tests just stated. These religious associations and orders are *everywhere* guarded with equal vigilance. In Ohio, no special act of incorporation can be passed under a constitutional prohibition, and all corporations are formed under a general act. They are liable to be altered or repealed. Most of the States have adopted this system.

The marriage law of Ohio is that of June 1st, 1824. The prior laws were those of 1788, 1792, 1799, 1802, 1810, and 1822, showing a special guardianship over this civil institution. This Ohio law has penalties for the breach of its regulations, authorizing ordained ministers of any religious society or congregation, after license from a specified court of record, or for any justice of the peace, or for the several religious societies, agreeably to the rules and regulations of their respective *churches*, to join together all persons not within the prohibited degrees. There is a significance in the use of the word—Church—in this and similar acts, a like spirit animating all the legislation of all the States and Territories of the United States on the subject of the marriage form. The word Church, derived through the Saxon and the German, from the Greek *Κυριαχος*, carries ever along with it a reverential idea. Its use superadds to the forms of a civil contract another and more solemn obligation, as in the presence of *Κυριος*,—The Lord. Hence, when peculiar forms for its solemnization are known to have been used immemorially, reaching beyond all traces of legislative provisions, marriage may claim its common law privileges. In the absence of statutory regulations, defining with precision its special form, it is fully protected by usage, and lifted above the whim and caprice of the parties. There is no State or Territory in the United States without some form of marriage legislation, either statutory or under established usage, and it has been

shown that casual assemblages are far removed from the religious associations incorporated by law. The churches into which the Christian world had been subdivided at the period of the settlement, had full rights according to the respective creeds of each, and nothing better attests the reverence for this sacred obligation, under the marriage contract, than the unequivocal sentiment of disgust pervading all sorts of people, everywhere, at the attempted introduction of polygamy in Utah—a remote wilderness, to which the Mormons had been forced solely on account of this obnoxious doctrine in defiance of morals, and against common law.

The recent legislation of the States and Territories has sought to accommodate itself to all the changing phases of an earnest religious feeling, and to these religious associations, under a threefold supervision, judicial, legislative, and executive, the definition of Commonwealth, in the celebrated treatise of Cicero, may very aptly be applied:—Est igitur, inquit Africanus, res publica res populi; populus autem non omnis hominum cœtus quoque modo congregatus, sed cœtus multitudinis *juris consensu* et utilitatis communione societas.

The German *Free* Association (Gemeinde) of Philadelphia, *incorporated* in 1856, to which attention has been called, is one of that class, subjected to a strict legal examination of its objects, and the right of its speaker, or other authorized head, to certify to a marriage, as being valid, according to the rules and regulations of the religious association, would be sustained under their act of incorporation. As being a *bonâ fide* religious community, the Pennsylvania Act of 1700 would have given effect to its registry of marriage under its seal. It has been said that any words proving the contract would have established a valid marriage in Pennsylvania, and yet no State in the Union has, on its statute books, more stringent regulations for the *solemnization* of marriage than Pennsylvania. These Acts—1700 and 1729—are supposed to have no pith and point now under some decisions of the State Courts, but these decisions have only gone to the extent of like judicial ruling in the Courts of England, modifying the Mar riage Act of 1754. In Pennsylvania, twelve witnesses were re-

quired under these Acts, and on principles of policy, in order to prevent the disastrous consequences to the issue, the Supreme Court of Pennsylvania very properly decided that such provisions, in their acts regulating marriage, were *directory*, and not *mandatory*. It is thus in England, and an Act of Parliament, that of 8 Geo. 4, c. 6, in regard to marriage in Prince Edward's Island, is to like effect. It was borrowed, however, from the Scotch law, by which *public* solemnity had always been regarded as a matter of order, and by no means essential to marriage. This, again, was a mere declaration of the principle of Roman law—Si vicinis, vel aliis scientibus, uxorem liberorum procreandorum causâ domi habuisti et ex eo matrimonio filia suscepta est: quamvis neque nuptiales tabulæ, neque ad natam filiam pertinentes, factæ sunt, *non ideo minus veritas matrimonii* aut susceptæ filiæ suam habet potestatem.—(Cod. Lib. 5d tit. 4.) But this decision of the Pennsylvania Court, with its due remedy for neglect of some forms, *directed* by the Acts, has not swept away all marriage ceremonial, and reduced a time out of mind *rite* there, according to the former low standard of Scotch law, to mere neighborhood repute of cohabitation. On the contrary, this same Court has declared that no trivial or equivocal circumstance should be taken as sufficient for a marriage. To the English Marriage Act (Lord HARDWICKE'S), a stringent purpose will be conceded, and yet, *under it*, a marriage directed to be in the parish where the banns were published, has been solemnized elsewhere. The want of a license, both here in most of the States, and in England, when *directed* by law, does not affect the validity of the marriage. It subjects the delinquents to a penalty. With entire freedom of conscience, all matters of a religious nature would, in the United States, give rise to much discussion, and our laws have left the religious nature of marriage solely to the care of religion. As the principles governing marriage need to be elucidated through the canon law, the civil law, the common law of England, and as modified for the thirty-four States of the Union, it is not surprising that a conflict of opinion should have been supposed to exist. There has been a growing sentiment that a mere agreement be-

tween parties properly witnessed, would make a valid marriage It is a vexed question in many States of the Union, needing further adjudication, and yet marriage in the colonies of America was always celebrated by a clergyman, or before a magistrate. The Jews and Quakers have had, in England, their religious forms respected and allowed. It was conceded always here. This question, settled in England, has been decided one way for Scotland, and just contrariwise for Ireland. How far the intervention of some special form for solemnizing it is essential remains an open question in the State of Maine. In South Carolina the Supreme Court has intimated the opinion that the statutory forms must be strictly followed. The strict and scrupulous care in guarding the marriage vows in this State has in *no one instance* permitted *a divorce* since the Revolution of 1776, and in striking contrast to this, the poet and dramatist, Werner, died as late as 1823, at the Austrian capital, leaving three widows behind him. These disorders in the moral world are apt to bring about their own abrogation. Marriage, in Maryland, is regulated by the Act of the General Assembly of 1777, recently made an article of the new Maryland Code—LX. The first marriage act extant is that of 1692. In this State some *form*, Christian or Jewish, or the blessing of some accredited minister, is absolutely required. Nor is the decision of the United States District Judge (GILES), recently given, at variance with this. What constitutes marriage, *in itself*, is altogether different from the mere proof and evidence of a marriage. It may be inferred from various circumstances, without weakening the argument in favor of *needful* legal forms in the face of some church, or before some judicial tribunal in the United States.

In settlement of colonies the right of eminent domain was jealously reserved for the sovereign. When proprietary rights were granted, the lands given were deemed to be held *as* of some named manor,—that of East Greenwich, for example,—so that the prerogative of the King might be intact, however distant the colony might be. Those who fled from England before acts of toleration, could not elude the law fictions of their day. The Bishop of

London came, in a short while, to regard all the colonies as if within his diocese, and so subject to his spiritual jurisdiction. At the outset, when merchant adventurers, under the first Virginia Charter of 1609, were planning the nearest route to El Dorado, Church of England men were not insensible to the obligations imposed upon them, and while the *ecclesiastical law*, as a system, was ill adapted to the necessities of a new country, the *gospel* could be propagated in foreign parts. Clerical ambition, all this while, may not have slumbered, and the religious feuds that soon shook England to its very centre, must have lost no portion of intensity after changing skies and crossing seas. The *prime* causes, leading to the American Revolution, are yet to be subjected to philosophical analysis, and how far these mutual religious jealousies may have contributed to that result remains to be weighed. With Catholics marriage, after the Council of Trent, had been elevated to a sacrament, and the Church of England men in the colonies vied with those in dissent from their church in having marriage duly reverenced. Early records prove that, far in advance of the English Marriage Act, the civil contract of marriage *in the colonies* had a settled form for its solemnization. Rolfe was married to Pocahontas after the Liturgy of the Church of England, and the imagination of James I. was highly excited at this formal act in Virginia. that might possibly be turned in time against his prerogative rights there. A morganatic contract between Rolfe, his subject, and the Indian princess would not have touched the eminent domain in himself and his successors; but this had been denizened, not fully naturalized in England. He was quite indignant at Captain Smith's want of foresight, and for a while it was the fashion at Court to be circumspect in any civilities to the daughter of Powhatan.

The first Maryland Marriage Act, it has been already mentioned, was that of 1692, in the 4th of William & Mary. New York colony proceedings indicate a similar act there in 1691, empowering magistrates as well as ministers to marry; but no collection of New York laws contains the act. Maryland, New York, and Virginia, in regular course of service, had the same person as Governor and Lieutenant-General, and he was a high

prerogative man in Church and State. The two Acts of Maryland and New York have a kindred origin in his zeal for enforcing the usage and custom in regard to their marriage form, prescribed in both acts in like terms. The Maryland Act remained in a printed form in a collection as early as 1700; though its existence had escaped the notice of the Rev. Thomas Bacon, when he prepared his folio edition of Maryland Laws in 1765. These Acts of 1691 in New York, and 1692 in Maryland, settle the question of "the usage and custom" prior to that time. As early as 1690 ecclesiastical matters were to be *resettled* in Maryland and Virginia, and under the direction of the learned and excellent Bishop of London (Henry Compton), the trust was confided to the Rev. Dr. Bray, whose name among English divines, to this day, is a sure guaranty of the thoroughness of any work he would assume. Coming to Maryland and Virginia, these colonies were subdivided into parishes, and parochial libraries, under colonial acts, were established. Queen Anne is known to have no special claim to the character of being liberal, and yet, through the Rev. Mr. Bray, she was induced to advance the funds for a library, to be carefully selected under his inspection, and shipped to the city of *Annapolis*, in good order and well conditioned.

The Roman Catholics settled Maryland in 1632; but a score of clergymen could be named, belonging to Virginia, who, in the exercise of their holy calling, had become familiar with the Chesapeake Bay and its tributary rivers some years in advance of the Maryland Charter. George Calvert, first Lord Baltimore, and his son Cecilius, second Lord Baltimore, had, in company together, visited the Chesapeake Bay from their prior residence at Avalon, in Newfoundland, and on their coming even thus early, Protestant sentiment had planted itself along the Eastern Shores. The fact of the marriage of Pocahontas has been cited, and of the families in Maryland and Virginia, not a few may find the first of their name among the patentees of the first Charter of James in 1609.

Lord Baltimore (the first), among the leaders of public opinion in his day, was a statesman of no ordinary range and adjustment of ideas—those best suited for winning sympathy and promoting

an adventurous spirit. He had too much at stake in the bright future opening to him in Maryland to have proved either bigoted or illiberal. The Proprietary rights under the Charter from Charles I., were just such as to have graded him and his heirs at law after him, to the full level of Counts Palatine. Father and son had their eyes gladdened at sight of this goodly heritage on the two shores of the Chesapeake; and the favorite courtier of James I. had sufficient self-reliance to make sure of a Charter from his son. Their personal exploration had brought to their knowledge a soil and climate far better than in Newfoundland, where they had already proprietary rights. Between the younger Calvert and Captain Fleet, subsequently the interpreter and successful mediator between the St. Mary's colonists and the neighboring tribes of Indians, there was a partnership in trade. The Eastern Shores of the Maryland Estuary, for some years prior to this visit of the Baron of Baltimore and his son, antecedent to the Charter, had become sites for Protestant Virginia trading posts at every available point near the confluence of each great river with the Bay, from the Susquehanna to the Pocomoke. These Protestant settlers claimed to be there under prior grants from the King in Council and the Governor of Virginia; and the "*hactenus inculta*," as applied to this territory in the Charter, was a fruitful source of trouble and actual conflicts. The reconciliation of religious differences was creditable to the sagacity of the statesman through whom the Charter was secured. But the marriage rite, after the liturgy of the Church of England, was already domiciled on the shores of the Chesapeake, and the Roman Catholics and others under the second Lord Baltimore, being found to regard it as a sacrament, only strengthened this prevailing sentiment in favor of due forms in the presence of a Church minister. In 1672 the Antigua Legislature—Act of 24th of Charles II—confirmed all marriages there solemnized before a magistrate or a member of the Council, and in 1691 the English Parliament was, in like manner, forced to legalize such marriages previously had before a magistrate under the Commonwealth Act of 1653. In the West Indies and the Colonies, the want

of ordained ministers was the excuse for neglecting the marriage form after Church ordinances, so generally followed from early times in England; and as the ceremony before a magistrate met the requirements of the Canon Law, where the binding force of the Council of Trent was denied, it was natural for those removed from their centre of Church power to adopt it in zeal for order and decorum. It is very probable that magistrates in the Colonies married long in advance of the Act of 1653; and that this option to the parties, making marriage a civil contract or a religious ceremony, so early found in the Colonies, was in fact English usage and custom. The Act of William IV. may consequently be the declaration of a common law principle there in regard to a twofold mode of celebrating marriage. In France it is a civil contract merely, and the religious sanctions accompany it as a matter of decorum and social propriety. In the States and territorial governments, the religious form of marriage is the general rule, being imperative in some of the States, and, save the State of New York, there is no State or Territory in which some special form has not been prescribed. For a brief interval in 1830, the mode of solemnizing it was fixed, and the repeal of that portion of the law left it again to the usage and custom. In 1753 the clergy of New York made an attempt to engross the privilege of joining persons in matrimony, but it was strenuously resisted as contrary to custom. Licenses there, as in Maryland, very early aided to increase the revenue. In 1717 the Maryland Marriage Act of 1692 was modified, and from that time the privilege of marrying has been withheld from magistrates. The present Marriage Act of Maryland, embodied in the recent code, is that of 1777, and the form must be after the ritual of some religious denomination, Christian or Jewish. In England and in every State of the United States, the greatest indulgence has been conceded to the Friends, called Quakers. Their mode maintains in its integrity the order of marriage, and secures its due authentication. Clandestineness is altogether excluded. The marriage must be in the face of a congregation, duly assembled, and the mutual promise of the man and woman is attested by

those present. In 1677, so strict was the discipline among the Quakers in regard to marriage, that the nuptials of persons, one of whom "had lately come forth from England," and neglected to bring her certificate from Friends' Meeting, had to be postponed therefor, after notice of intention to become husband and wife. The same particularity has been shown among them to the present time.

Marriage in the Roman Catholic Church, since the twenty-fourth session of the Council of Trent, has been regarded as a sacrament, and the Friends, called Quakers, as if in emulation, while denying the efficacy of all forms, have been at special pains to hedge the marriage ceremony in the strictest manner. Their example has not been without its salutary effect in this behalf with other denominations of Christians. Its privileges, with publicity after their mode, cannot be unduly assumed, and parents, on a question of moment for the congregation, are not apt to be the very last consulted. It is an institution *sui generis*, on which the security of the social system must rest, and Catholics and Protestants are alike interested in providing a formal and legal mode. A failure of publication, enjoined in a Quaker marriage, would vitiate it after the order established among them, and the Jewish ceremonial, long conceded as of right in every country, needs no comment.

The decisions of the Supreme Courts, in the several States of the United States, must not be regarded in the light of evasions of the respective Marriage Acts. Even the vigorous rules of the English Marriage Act (Lord HARDWICKE'S) had in many instances to be relaxed; and under the Act of 6th & 7th William IV., amended and corrected by supplementary acts of the present Queen, parties may treat marriage at their option as a civil contract. It has been stated that colonial statutory regulations for marriage were more than a century in advance of the English Act of 1754, and also that these early colony acts had recognised, as settled usage and custom, just as parties preferred, the celebration of the marriage ceremony either according to *some* Church or religious form, or before some order of the magistracy. The want

of regularly ordained ministers, Catholic or Protestant, in the new settlements of America, had first led to the adoption of the rule of the Canonists, making marriage valid as a mere contract, when made in the presence of a magistrate, or some member of a colonial council of state; but a return to the Church form may be traced in the earliest legislation. The Marriage Act of the Jamaica Legislature—that of 33 Charles II.—prescribed penalties for the non-observance of its provisions, and as these were only aimed at Church ministers, the inference is irresistible that the solemnization before the magistrate had ceased at that period there. The Commonwealth Act of 1653 had been repealed in England, and the usage of marriage before a magistrate was thus sought in Jamaica to be discountenanced. The Barbadoes Acts of 1734 and 1739 are to like purpose, seeking to restore a religious form. Our commentator, Chancellor KENT, has expressed the opinion that the intervention of a clergyman is not essential to a marriage, and, following Sir WILLIAM BLACKSTONE, he has laid down the further principle that no peculiar ceremonies, before a clergyman or a magistrate, are requisite for a valid marriage; *mere words, evidencing consent*, being sufficient. But in qualifying his statement by presuming "*an absence of any civil regulation*" (Vol. 2d, page 86), he refutes his own argument.

It will have been noted that in most of the States of the United States, marriage, in order to be valid, had, under usage and custom, to be celebrated under one of two forms—before a magistrate or with some religious sanction. This usage was *the civil regulation*, and one full as binding as any statute law. Jamaica, wrested from Spain under Cromwell, had its marriage law immediately after its annexation, and though subsequently restricted to a religious ceremonial, the twofold form had there grown into usage at one period. This early Jamaica legislation proves how very cautious the British Parliament has been in adapting the marriage law to the exigencies of a distant colony. Every English colony, afterwards a State of the United States, will be found to have faithfully maintained these sanctions of marriage through usage and other civil regulations. In the State of New

York no statute can now be found on record, though known to have existed in 1691, as to this mode of celebrating marriage, still retained there under usage. In fact, a common law regulating the forms of marriage had fastened itself upon each community over all the Colonies. In South Carolina no layman, under the penalty of £100, could join persons in marriage. But laymen did venture, claiming right under usage, and hence alone the statutory penalty. It was the known custom to marry before a magistrate when some incident had occurred to prevent the ceremony before some Church minister, or the canon law learning of some planter had made him recusant. In Georgia, by Act of 1799, clerks of Courts were to issue marriage licenses to judges and justices, as well as to ministers of the gospel. The earliest marriage act of Maryland, 1692, like the recent and latest English marriage acts, gave parties the option of going before a magistrate or having the ceremony in *facie ecclesiæ*. This did not discredit the marriage of the Quakers, for in 1661 a marriage between them, *according to their own ceremonies*, was held valid in an ejectment cause, and their foothold in Maryland was rather too firm a one to be ousted by legislation on a religious tenet of their sect. The law of Maryland now exacts some religious sanction for marriage, and in case of banns, when marrying without license, in a house of religious worship previously recorded as such, Maryland has not reached the point gained by following out the recent English provisions of the Act of William IV. Marriage is not a civil contract, disjoined at the option of parties from all religious form.

The accurate student of our early social history will be sustained in the convictions that Lord HARDWICKE (Burrows's Sess. Cas. 25), eighteen years prior to his Marriage Act in 1754, was better advised upon the law of the solemnization of marriage than the American Commentator KENT, when he assents to a dictum of BLACKSTONE. Prior to the first English marriage act, it had been decided that at common law, confessions and acknowledgments, in the presence of witnesses, did not make a valid marriage. How marriage was regulated in England before 1754, is a ques-