

either in the Church or in the Court) is from the Canon Law, and calculated for several good Ends, as 1^o to warn all Persons to object any thing they know against the intended Marriage v. g. to great Proximity of Blood, Proconsanguinity or Promiscuity of Marriage to another, or that either Party is already actually married. 2^o That Parties may have Time to repent or fall off upon just grounds. 3^o That the Parents Consent if any be may be had. Proclamations hath this legal Effect, that Persons are thereby put in mala fide to contract or deal in civil Matters with the Bride to the Bridgrooms Prejudice 29 January 1633. Scot contra Brown even after the first Diet of Proclamation 5 January 1666 Lady Bute and her Husband contra Sheriff of Bute Because in actibus repetitis respectu initiation in instantaneis finis. Yea she can do no Good to the Prejudice of herself without his Consent. eod. d. inter eodem therefore the Parties must be proclaimed in the parish Churches of both 8 July 1673. McDonald contra Mitkin. And if there be several Churches in the Place or Town where any of the Parties to be married reside Proclamation must be in all these Churches Act 5. Albem. 1699. Requir. Person to be married and their Parents Tutors and Curators if they any have should be given up to the Minister of the Bonds in which any of them live, who orders Proclamation to be made three several Sabbaths in the forenoon before Divine Worship begin of the Purpose of Marriage betwixt such Parties audibly named and designed by their ordinary Additions and Writs Act 5. Ap. 1699. But Presbytrial are in some necessary Emergences, allowed to dispense with Proclamation of Banns Act. 23 & 24. December 17 & 18. Ap. 1630. Art. 21. had sometimes the Minister dispense with Part of the Order and Proclamation, by proclaiming the Parties twice if not thrice in one Day. But tho a Bride cannot after proclamation of Banns contract to the Prejudice of her future Husband, yet a Husband was found liable to be removed for his Wifes wedding Cloaths taken off by her from a Man-chant after the Proclamation of Banns 10 July 1672. Nelson contra Guthrie and Cairns. Because his Wife believed to have had other Cloaths if she had not been furnished with these. And Gifts by a Bridegroom to his Bride, or by her to him after Proclamation of Banns and before their Marriage, are not revocable as Donations between Man and Wife 23 January 1660. Hume contra Humes.

Clandestine and Irregular Marriage is that which is not gone about in the orderly Way aforesaid. By the Canon Law Clandestine Marriages without observing the due Obligation of the Church are condemned, but not annulled c. 2. X. de clandest. desponsat. c. 9. q. i. qui filii sunt legit. With us, Clandestine Marriage is punished thus. The Celebrator may be summarily seized by any Magistrate or Justice of Peace and committed to Prison, and further may be banished for ever, never to return again under pain of Death, and also may be subjected to an arbitrary Corporal Punishment or Fine Act 34. Pari. Sep. 1. Ch. 2. junct. Act. 12. Sep. 5. Act. 6. Sep. 7. Pari. R. W. The Witnesses to any Clandestine Marriage are each of them liable in the Sum of 100 Pound to be applied to pious Uses within the Parishes where the Persons so irregularly married do dwell, and if insolvent, to corporal Punishment d. Act 6. The Parties so married, are subject to three Months Imprisonment, and farther to lie in Prison till he pay 1000 Pound if he be a Noble man, 500 Pound if he be a Gentleman or Burgeis, and 100 Merks if another Person to be applied to pious Uses, in the parish where the married Persons dwell. If two Persons residing in Scotland, get themselves married

married in England without Proclamation of Banns in Scotland, and contrary to the Order of the Church thereof, a Nobleman so offending must pay 1000 Pound, a landed Gentleman 1000 Merks, a Burgeis 500 Pound, any substantial 500 Merks a Yeoman 100 Pound, and each inferior Person 100 Merks, half to the King, and half to the Parish. Any Person married in the disorderly Manner aforesaid unable to pay, because of his mean Condition, is to be punished with Stocks and Irons. Further, Persons disorderly married are obliged when required, to declare the Names of the Celebrator and Witnesses, under the Pain of 2000 Pound to a Nobleman, 2000 Merks to a landed Gentleman, 1000 Pound to any other Gentleman or Burgeis, and 200 Merks to any other Man to be applied to pious Uses within the Parishes where they dwell, and such are to be imprisoned till they declare and pay Act 34. Pari. Sep. 1. Ch. 2. junct. Act 6. Sep. 7. Pari. R. W. Tho our Statutes appoint no Punishment to Women, if a Noblewoman being an Heiress marry a Gentleman disorderly, it is not sufficient to punish him as a Gentleman: but she may be fined as a Noblewoman, because she hath Precedency as such. McKenzie Observ. on d. Act 34. All the fornicious Offenders may be prosecuted at the Instance of those concerned, or of the Procurator Fiscal where they happen to be questioned d. Act 12. The inflicting of which Penalties, doth not exempt from Church Censure d. Act 34. Nor can the parish Minister discharge them, upon the Offenders satisfying the Church. But they may nevertheless be purified by the Procurator Fiscal, and the Fine applied to pious Uses within the Parish of the Offenders Residence, with the Burden of the Expence of the Suit 6 December 1705. Proc. Fiscal of Annanvale contra Caruthers of Holmains. But the Clandestine Marriages are liable to severe Penalties, yet they subsist as to all other Effects Stewarts Answer to Lordes House lit. Marriage clandestine.

Sec. 2.

Who may not contract Marriage.

In Order to know who may contract Marriage, it is necessary to know who are the Persons incapable to marrie; for these being excepted, all others are capable to marrie; seeing Capacity arises from thence, that there is no Incapacity. Persons cannot marrie, who cannot consent as Idiots, Persons so wholly bereaved of their Senses by Drinke that they cannot rise from their own Filth Mad folks Turande furore; and those within the Years of Pupillarity, that is Males under 14 and Females under 12 years of Age pr. inst. de nupt. junct. pr. eod. quib. mod. but for the Doctors assign various Reasons why Women are presumed to arrive earlier at Maturity than Males. Whereof some are purely secular: as that ill Weeds grow up faster than good and wholesome Plants; or that Women are sooner at their Prime, because they sooner fade, according to the proverb, soon ripe soon rotten. But that which seems more plausible, is because it requires not so much Strength to be posseive, as to active in the Business of Generation. Whatever be the Reason why the Marriage is patent sooner to the Female than to the Male, the Canon Law makes an Exception from this Rule: si malitia suppleat etatem, if carnal Affectious Desire supply the want of Years c. 9. et ult. x. de desponsat. impub. tho malitia seems here in the Canon Law to signify the same thing as prudentia Sagacity and Understanding, for it is said in one of the Texts cited (d. c. ult.) nisi prudentia suppleat etatem. This Rule of judging of a Persons fitness for Marriage from Sobility Sufficiency, is observed in all Popish, and in some Protestant Countries, who think it safer to make the Magistrate judge of ones Ability to marrie. But we follow