Greater Excommunication was, at that time of Day, it will be thought, that these Constitutions, did as fair as any merely penal Laws could do, to put a Stop to the Evil. In the Reigns of Hen. 8. & Edw: 6 Commissions were appointed by virtue of Acts of Parl.t: 25 H8. c 19 – 3 & 4 Edw. 6. c. 11. to Examine the Canons, Constitutions & Ordinances Provincial & Synodal, which had been here=tofore made, by the Clergy, of this Realm; that such, as were judged worthy, might be obeyd, for the future, & the rest abrogated. The Commissioners appointed by Edw. 6 for this Purpose, compleated a Scheme under the Title of Reformatio Legum Ecclesiasticarum, which tho, it never received, the force of Law, has been made public, & may be mentioned, to Shew, what was the Sense of the Great Men, who composed this Scheme; (consisting of 16 of the Clergy, & 16 of the Tem=poralty of the Upper & Nether House of Parl.t: with Ab Cranmer at the Head in this Question . . .

Hen. 8 & Edw. 6.

25 H8. c 19 – 3. 4 Ed. 6. c 11 –

Reformatio Legum

And in the Title de Matrimonio, after directing that Banns shall be publish'd, by the Minister in the Church, & that the Man & Woman, shall be openly joined together in the Church, with the Ceremonies therein prescribed; it is expressly declared, that till they have plighted their mutual Faith, in this manner, the Parties shall be entirely free, from each other, & neither can demand any matrimonial Right from the other: & then goes on, "Item praecipimus ut nec Liberi nec Orphani (without mentioning any Age) Uxores ducant, aut ineant, nisi Authoritas illorum intercesserit, in quorum potestate sunt: quod si fecerint, tales nuptias omnino non valere sancimus, et ad nihilum recidere.

But the Scheme never having received the Sanction of Law, & no other of the same kind, having ever been brought to any Perfection, the antient Canon Law & Provincial Constitutions, so far as they were not contrary to the Laws of the Realm, or the Kings Preroga=tive, still remained in Force, by 25 H8. cap. 19. Sec. 7. The Canons against Clandestine Marriages certainly did so, & were in many Instances enforced, in the Eccles=iastical Courts, by the Censures, which by those Constituti=ons they were impowerd to inflict; and the Ecclesiasti=cal Courts were justified in so doing, when an Attempt was made, to obtain a Prohibition, to restrain them in the Case of Matthew & al. v. Martins, where the Resolution was, "That if any Person marry without Publication " of Banns, or Licence, dispensing with it, they are citable " for it into the Ecclesiastical Court, & no Prohibition lies." . . "

Pasc. 8 Car. 1. Jones. 257. 5



The same was held in a much later Case, that of Middleton & Croft. In that Case, "Middleton & his Wife were articled " against in the Ecclesiastical Court for a Clandestine Marriage " Prohibition was applied for, on a Suggestion, that the Power " of the Ecclesiastical Court, was taken away by the Statute " 7 & 8 W3. c 35. by which Penalties were laid on the Clergymen " marrying, & the Parties married, without Banns or licence: " which Penalties, were to be recovered in the Temporal " Courts: the Judgement was, that the Prohibition stand as " to proceeding, for the Pltts being married at an Uncanonical " Hour; that Circumstance having been, as far as appears, " introduced by the Canons of 1603; & that a Consultation be " awarded as to the Residue of the Case . . .

BR. 10 Geo. 2 . . . .

7. 8. W3. c 35 . . .

The Canons of 1603. as far as their Authority goes; which entirely extends, to all Clergymen, & Ecclesiastical Officers, concurred in the same Design, of preventing Clandestine Marriages, by all the Cautions that could be devised, in publishing Banns, & granting Licences, & by punishing such Clergymen, as should contemn their Orders, by Ecclesiastical Censures

Canon 62. "No Minister on pain of Suspension Per " triennium ipso facto, shall celebrate matrimony between " any Persons, without a Licence, granted by some of the " Persons, in these our Constitutions expressd, except the " Banns of Matrimony have been first publish'd 3 Several " Sundays or Holydays, in the time of divine Service " in the Parish Churches & Chapels, where said Parties dwell " according to the Book of Common Prayer. Neither shall " any Minister on the like Pain, join any Persons " so licenced, at unseasonable Times, but only between " 8 & 12 in the forenoon; nor in any private Place, but " either in said Churches or Chapels, where one of them " dwelleth: Nor when Banns are thrice asked, (& no " licence in that respect necessary) before the Parents & " Governors of the Parties, to be married, being under " 21, shall either personally, or by sufficient Testimony, " signify their Consents given to said Marriage . . . . . "

62. Canon . . . . .

Canon 100. "No Children under 21, shall contract them=selves, or marry, without the Consent of their Parents " or Guardians, if their Parents be dead . . . . . "

100. Canon . . . . .

Canon 101. No licence shall from henceforth be granted for Solemnization of Matrimony, without Publication of Banns, but upon good Security taken.

101. Canon . . . .