

previous impediment; though not a cause of divorce, if they happened after marriage^x. And modern resolutions have adhered to the reason of the civil law, by determining^y that the marriage of a lunatic, not being in a lucid interval, was absolutely void. But as it might be difficult to prove the exact state of the party's mind at the actual celebration of the nuptials, upon this account (concurring with some private family^z reasons) the statute 15 Geo. II. c. 30. has provided, that the marriage of lunatics and persons under phrenzies (if found lunatics under a commission, or committed to the care of trustees by any act of parliament) before they are declared of sound mind by the lord chancellor or the majority of such trustees, shall be totally void.

LASTLY, the parties must not only be willing, and able to contract, but actually must contract themselves in due form of law, to make it a good civil marriage. Any contract made, *per verba de praesenti*, or in words of the present tense, and in case of cohabitation *per verba de futuro* also, between persons able to contract, was before the late act deemed a valid marriage to many purposes; and the parties might be compelled in the spiritual courts to celebrate it *in facie ecclesiae*. But these verbal contracts are now of no force, to compel a future marriage^a. Neither is any marriage at present valid, that is not celebrated in some parish church or public chapel, unless by dispensation from the archbishop of Canterbury. It must also be preceded by publication of banns, or by licence from the spiritual judge. Many other formalities are likewise prescribed by the act; the neglect of which, though penal, does not invalidate the marriage. It is held to be also essential to a marriage, that it be performed by a person in orders^b; though the intervention of a priest to solemnize this contract is merely *juris positivi*, and not *juris naturalis aut divini*: it being said that pope Innocent the third was the first who ordained the celebration of marriage in the church^c;

^x *Ff.* 23. tit. 1. l. 8. & tit. 2. l. 16.

^y *Morrison's case. coram Delegat.*

^z See private acts 23 Geo. II. c. 6.

^a Stat. 26 Geo. II. c. 33.

^b *Salk.* 119.

^c *Moor.* 170.

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