

**COMPENDIUM OF THE LAWS OF  
ENGLAND, SCOTLAND AND  
ANCIENT ROME. FOR THE USE OF  
STUDENTS. PART I. OF  
MARRIAGES; PP. 1-192**

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Compendium of the Laws of England, Scotland and Ancient Rome. For the Use of Students. Part I. Of Marriages; pp. 1-192 by James Logan

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**JAMES LOGAN**

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(By James Logan, Esq.  
Author.)

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M. DCCC. XXXIX

## INTRODUCTORY REMARKS.

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THE arrangement, of the subject which the author proposes to adopt in the following publication, may appear to some to require an apology. To such, he would observe, that law is not, like geometry, a science whose doctrines can be developed only in one un-deviating order, but that, except in so far as clearness is concerned, it matters little from what point we begin—that the ordinary division into the rights of persons, of things, and actions, rests solely on the example of the Institutes of Justinian, and that it has therefore appeared, to him at least, deserving a trial, in a work that does not profess to be a complete institute of English and Scottish law, to commence with marriage, which, along with property, may truly be said to form the foundation on which civil society

is built. From marriage, the principal relations which the law contemplates are derived. On it the descent of real and personal property depends. With it, the most important rights of persons and things are mediately or immediately connected. In a word, it forms the very *primum mobile* of the law.

But, even if less could be said in defence of the order which the author has adopted, there is one consideration which would certainly render him not altogether without excuse. For it has been well remarked by Sir John Herschell, in his treatise on astronomy, that "it is always of advantage to present any given body of knowledge to the mind in as great a variety of different lights as possible,"\* an observation which will apply to law as well as to every other science. Any new method, therefore, although possibly not the best, may be of advantage to the student.

On the primary importance of marriage as a social institution, the author may be excused for offering a few remarks. Law and morality ought ever to go hand in hand; and it is well, amidst the technicalities of the former, to bear in mind its connection with

\* Treatise on Astr. Lardner's Cyclopaedia, vol. xliii. p. 6.

the great and enduring principles of the latter.

Plato, with sound judgment, directs his legislator to take his stand from marriage, "Γαμικὴ δὲ νόμος πρῶτος κινδυνεύουσι εἶδη τοι καλῶς ἀντίθεσται πρὸς ἃς τίθηται πάση πόλει."\* And Cicero has happily designated this great institution as "*principium urbis et quasi seminarium reipublicæ.*† Its importance, indeed, to individuals, and to society, needs not the authority of these venerable and illustrious names, but is manifest on the most obvious consideration. Without such an institution as marriage, there would have been no check to sensuality, no security to affection, no refinement, no moral elevation. The domestic affections would have been extinguished, and along with them, the purest earthly happiness. The influence of woman would never have raised society from its primitive barbarity, but, on the contrary, would have been a perpetual cause of licentiousness and disorder. We should have had no science, no literature, no fine arts, no charitable institutions, and no heroic deeds. We have only to look to those countries where polygamy prevails

\* De Legibus, lib. iv, p. 125. Ed. Bepper.

† Cic. de Off.



to be satisfied of the truth of these remarks. And, in ancient Rome, where marriage rested on a somewhat precarious foundation, the influence of woman in refining manners was proportionably lessened. Nor has Christianity conferred a greater temporal benefit on society than by the indissoluble character which it has given to the marriage union, and by regarding those who are so bound together as "*one flesh*." It would be well for such as would have the law made less strict on the subject of divorce, to consider whether the public benefit of marriage ought, in any degree, to be sacrificed to a few cases of private inconvenience, and whether any system different from that which is now established in England would equally secure the general good.\* Dumont's theories on this subject are altogether impracticable, as human nature is now constituted. By how much you render marriage a less binding contract, by so much you impair its social advantages. It is to society what the principle of cohesion is to matter, and to weaken it must tend to the disintegration of the body politic. In Scotland, indeed, where divorce

\* *Legislation Penale et Civile par Bentham*, tome 1, pp. 382 to 392.

may be so much more easily obtained than in England, few bad effects have been produced by this cause. They are seldom applied for but in extreme cases, and would have been less numerous than they are but from the prevalence of irregular marriages. But a counteracting influence may be easily traced in the high tone of moral feeling which pervades that country, and which has also tended to lessen the evils that have resulted from the facility with which marriages are contracted in that part of the kingdom. After all, the influence of laws on society is chiefly external; but morality is the *salt of the earth*.

But whatever may be thought of the respective merits of the English and Scottish laws on the subject of marriage and divorce, their discrepancy has, no doubt, been productive of many serious evils. Whether any attempt, however, at assimilating them by a legislative enactment, such as that proposed in Lord Brougham's Scottish Marriage and Divorce Bill, would be attended with beneficial results, is a question of a very doubtful character. Nor has the present anomalous state of things, in fact, produced such general mischief as might have been expected; and it is wonderful, indeed, taking

all circumstances into consideration, that there should not have been an infinitely greater number of cases of conflict of the laws on this subject. The proposed change, however, is likely very soon to occupy the attention of Parliament, where it is to be hoped it will meet with that deliberate consideration which the importance of the subject demands.

In concluding these introductory remarks, the author would venture to express the hope that the present treatise may be found serviceable, not merely to students, but to the public in general. It is at once the interest and duty of every man to know the laws by which his rights are secured and to which he is amenable for his conduct. And, considering the close and still growing connection of the different parts of this island, it is of importance to all; and especially to persons engaged in business, to have some knowledge of the respective systems of jurisprudence that are established in the sister kingdoms. In presenting the leading features of the English and Scottish laws in a form accessible to all, the author would humbly hope that he may be doing an essential service to many who have now no means of