

tracting a marriage, even during an admitted lucid interval; though, at common law, his marriage during a lucid interval was as valid as his other acts. The marriage of a lunatic, under these circumstances, is avoided by the Statute alone, and hence Lord Eldon, after some hesitation, was of opinion in *Ex parte Turing*, 1 Ves. & Bea. 140, that it was unnecessary to obtain a sentence of the Ecclesiastical Court declaring it void. A person marrying one *non compos mentis*, who has been consigned to the custody of a committee, is guilty of a contempt of Court; as in the case of Mr. Packer's marrying Mrs. Ash, the Court committed Mr. Packer, the parson and others that were their agents, and Packer remained in custody a considerable time, *per* Sir Joseph Jekyll, 2 P. Wms. 111; *vide* the case, 2 Eq. Cas. Abr. 583; S. C. Prec. Ch. 412.

Otherwise the marriage of a lunatic is *voidable* only, and is to be treated as a lawful marriage after the lunatic's death, if not avoided during the coverture, and is attended with the usual incidents of such a marriage.¹ It was so decided in a case of *Ewing v. Moore*, June term 1836 of the Court of Appeals, not reported, and in which no opinion was filed by the Court. As to suits during coverture to avoid the marriage, on the ground of the lunacy of one of the parties at the time of its celebration, see *Hancock v. Peaty*, 1 L. R. P. & D. 335. It is held, however, in England to be no answer to an action for breach of promise of marriage, that the plaintiff had, before the making of the promise, been a lunatic, and confined as such in a lunatic asylum, provided she were sane at the time of the promise, *Baker v. Cartwright*, 10 C. B. N. S. 124; see *Hall v. Wright*, E. B. & E. 746, 765; S. C. in error; *Beechey v. Brown*, *ibid.* 796.

The contract of marriage is, in its essence, a consent on the part of a man and a woman to cohabit with each other, and with each other only. It is not necessary that all the words of the marriage-service should be actually repeated by the parties. Indeed, *Wood V.-C.*, in the case referred to below, said that he had certainly known of cases of complete marriages where it was perhaps improper that the marriage should be celebrated, in which the parties, being of the poorer classes, have carefully abstained from making the responses, especially that as to obedience on the part of the woman; and in *Ewing v. Moore supra*, the evidence was that the man (the lunatic) held his head down during the ceremony, and made no response at all. If (the ceremonies prescribed by law being complied with when their hands are joined, and the clergyman pronounces them man and wife, they understand that, by that act, they have agreed to cohabit together and with no other person, they are married. Therefore deaf and dumb persons may marry. The presumption is in favour of such a marriage, and of the capacity of the parties to contract, and the *onus* is on those who would impeach it. There is a distinction between unsoundness and dullness of mind, and if, there being no question of mental capacity, an objection is made that a deaf and dumb person did not understand the nature of the marriage-contract, into which she had been induced to enter, the objection is one on the ground of fraud, *Harrod v. Harrod*, 1 Ka & J. 4.

¹ See on this subject Harlan's *Domestic Relations*, pp. 20, 21 and note.