CONGRESS.—FIRST SESSION.

SENATE.

WASHINGTON, May 21.

The PRESIDENT pro tem. submitted a preliminary report of the eighth census, by the superintendent of that work. A motion was entered to print 100,000 copies.

Mr. GRIMES, of Iowa, reported from the Naval Committee a resolution of thanks to Commander Farragut, and the officers and men under his command, for their recent victories upon the lower Mississippi. It was passed.

Mr. TRUMBULL, of Illinois, from the Committee on the Judiciary, made an adverse report upon the bill for the protection of soldiers in the military service of the United States, and to suspend civil proceedings against them in the United States Courts.

Mr. FOSTER, of Connecticut, from the Judiciary Committee, reported back the bill to authorize the examination of parties to suits in the Courts of the United States, &c., with an amendment.

Mr. WRIGHT, of Indiana, offered a resolution, which was adopted, instructing the Military Committee to inquire in regard to providing bounties for the three months and twelve months volunteers; and also pensions for the widows and families of those soldiers who have died in the service.

Mr. PEARCE, of Maryland, called up the bill from the House, entitled "an Act to provide for the settlement of the accounts of John A. Smith, clerk of the Circuit and Criminal Courts of the District of Columbia." It was considered and passed.

On motion of Mr. WADE, of Ohio, the bill granting lands to States which may establish colleges for the promotion of agriculture and the mechanic arts, was taken up.

Mr. LANE, of Kansas, proposed to amend by excluding the public lands in Kansas from the operations of the bill.

The subject went over on the expiration of the morning hour.

A message was received from the House in regard to the action of the Senate on the impeachment case of Judge Humphreys, of Tennessee, and Mr. FOSTER, of Connecticut, reported from the special committee on the subject the following resolutions, which were adopted:

RESOLVED, That at one o'clock to morrow afternoon the Senate will resolve itself into a Court of Impeachment, at which time the following oath or affirmation shall be administered by the Secretary to the President of the Senate, and by him to each member of the Senate, to wit:

"I solemly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of West H. Humphreys, Judge of the District Court of the United States for the District of Tennessee, I will do impartial justice according to law."

Which Court of Impeachment, being thus formed, will at the time aforesaid, receive the managers appointed by the House of Representatives to exhibit articles of impeachment in the name of themselves and all the people of the United States against West H. Humphreys, Judge of the District Court of the United States for the District of Tennessee pursuant to notice given to the Senate this day by the House of Representatives, that they had appointed managers for the purpose aforesaid.

Resolved, That after the managers of the impeachment shall be introduced to the bar of the Senate, and shall have signified that they are ready to exhibit articles of impeachment against West H. Humphreys, the President of the Senate shall direct the Sergeant at-Arms to make proclamation, who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against West H. Humphreys, Judge of the District Court of the United States for the District of Tennessee". After which the articles shall be exhibited, and then the President of the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

Mr. FESSENDEN, of Maine, moved to postpone the special order—the bill "to suppress insurrection, punish treason and rebellion," &c.—for the purpose of taking up the tax bill.

After discussion the question was taken, and Mr. Fessenden's motion was carried—yeas 33, nays 9.

The tax bill from the House, entitled "an Act to provide internal revenue to support the Government and pay interest on the public debt," being thus up, the consideration of the amendments proposed by the Senate's Finance Committee was proceeded with.

The salary of the Commissioner of Internal Revenue was reduced from $5,000 to $3,500.

The committee amendments in the 4th section, with reference to recording the bond of Collectors, were stricken out.

The several verbal amendments in the sections up to the 10th, and that fixing July, 1862, instead of the 1st of May, as the time by which persons shall render lists of property subject to tax, were agreed to. In the 11th section the amendments to excuse the neglect to make such lists in *cases of sickness*, and to strike out the fine of $100, were disagreed to.

The committee's substitution in the 15th section was agreed to, relative to assessors giving notice and hearing appeals. The substitute for the 19th section was also agreed to, relative to the bonds of collectors.

The Senate went into Executive session, and subsequently adjourned.

HOUSE OF REPRESENTATIVES.

Mr. SEDGWICK, of New York, introduced a joint resolution authorizing the Secretary of the Navy to have the wrecks of certain vessels lying sunk in Hampton Roads raised. Referred.

Mr. ASCONA, of Pennsylvania, offered a joint resolution that the House adjourn on the 28th, the Senate concurring, until the second Monday in June. Laid on the table.

The SPEAKER stated that the regular order of business was the motion to lay on the table the resolution expelling the disloyal members.

The hour for the special order arrived—the consideration of the Confiscation bill.

Mr. VOORHEES, of Indiana, argued in severe terms against the financial system and policy of the Government during the present session. He said the present public debt and personal property in the United States, both North and South. It will be increased to one-sixth a year from hence. Some gentlemen will argue that it is a military necessity. He would here deny it.

The total expenses of the Mexican war were less than one-fourth of the expenses of the present rebellion, in proportion to the number of men employed. The profligacies and corruption in the various departments of this Government are more dangerous to the liberties of the people than the enemies in the field. Such language was used by a distinguished Senator who helped to bring the Administration into power. He abhorred treason, and could stand here during his whole hour, and denounce treason in the seceded States, but why do that while we have treason all around us?

Simon Cameron, late Secretary of War, has been tried and convicted by this House of fraud, peculation and corruption of the grossest character, and what follows? He is clothed with fresh power; he goes from glory to glory; and with a resolution of this House branding him with crimes against his country, he will present himself to the Emperor of Russia. The Secretary of the Navy was also rebuked by the Senate. We live in strange times. The corruptions of the Administration are saddling the industry of the country with burdens which they cannot bear. He spoke of the frauds committed by Fremont in the Department of the West.

He said Fremont had settled down in St. Louis with a horde of peculators, committing fraud, and now he is once more in command, ruling honest people. He said the interest on the public debt would be $100,000,000 per annum; the civil expenses of the Government $250,000,000 per annum; the pension list $100,000,000 per annum; and allowed $50,000,000 for various kinds of claims against the Government—making a total of at least $400,000,000 to be raised annually by the people.

Mr. MORRILL, of Vermont, said the present public debt was about $600,000,000, which, at seven per cent., would be $42,000,000 per annum.

Mr. KELLEY, of Pennsylvania, replied to the speech of Mr. Voorhees, by saying he believed in honesty and veracity. He had heard of Satan correcting sin and darkness, calling darkness black, but he never heard of it on such a large scale before.

Mr. VOORHEES—Will the gentleman allow me—

Mr. KELLEY—I will not yield.

Mr. VOORHEES—You shall yield. I denounce it false.

Mr. KELLEY, resuming, spoke at some length upon the character of Mr. Buchanan's cabinet.

Mr. LANCINO, of New York, spoke in favor of the confiscation bills. "He contended that in time of war the Government could take the slaves of Rebels. He contended that this was the golden opportunity to abolish slavery. Because in time of peace they could not interfere with it; but now in time of war the Constitution gave them the power.

Mr. MALLORY, of Kentucky, would not follow the line of the argument of the gentleman from New York. He believed the sentiments just uttered by that gentleman belong to a few others of this House, and he trusted that it was limited to a few.

He would not be induced to go aside the Constitution. He objected to the bill because it did not include the constitutional provision that treason does not work corruption of blood to the person attainted. He never heard of such a dastardly thing as to hang a man, and then try him. Owing to the present state of affairs, he believed it inexpedient to pass an act of confiscation at this time.

It is not the intention of some gentlemen on this floor to pass acts of confiscation for the purpose of punishing the Rebels, or for defraying the expenses of the war, but solely to get rid of the institution of slavery. He knew this was the object, because in a conversation they had acknowledged the fact. This is their avowed and acknowledged purpose. Slavery was not per se the cause of the rebellion, but had been used by demagogues, fanatics, and scoundrels, North and South, as machinery to overthrow the Constitution.

Adjourned.

ADVANCE OF McCLELLAN.

A RECONNOISSANCE AND REPULSE WITH LOSS.

Special Correspondence of the Philadelphia Press.

CAMP WHITE HOUSE, May 18.—I must be very brief to-day. I hear from a reliable source that we made a reconnoissance yesterday morning, and coming across a body of Confederates, made a dash at them, but were repulsed with some loss. The division has just received orders to prepare for a forced march. Everybody, from general to private, is busy attending to his business, while the correspondent is scribbling that his letter may go by the mail. Did this statement come from any less reliable authority than my informant, I should not give it to the public, but the character of my author precludes all possibility of attempt at deception. It may turn out to be somewhat exaggerated, and it is earnestly hoped that it may. Be it as it may, it will not check the onward movement of the army to Richmond. But a desperate battle will be fought before that city is yielded up. About six miles from the city, only ten miles from our advanced lines, the Confederate army is concentrated in force, and here the battle must be fought, which is to destroy the Confederate army in Virginia.—Success is almost certain, although the Confederate army outnumbers ours by 30,000 men. The weather Yesterday was intensely hot, but to-day it is cloudy, and there are signs of rain. But what have soldiers to do with rain or sunshine? Where necessity calls they must go, and necessity and war own no law. All the tents have been struck, and everything is packed; the head of the column is in motion, and the mail carrier is waiting for me to close-up.

CITY INTELLIGENCE.

HOLDIERS.—If it was not for the soldiers, our police would scarcely find anything to employ their time. As it is, however, the local detectives furnish some employment. There is not a day but from twenty to forty soldiers are picked up, mostly in a very "how-came-you-so" condition. They are taken to the police stations, where they are detained until they be able to tell to what regiment they are from, when, under charge of policemen, they are sent to camp. Many of them have been absent from their regiment for several days, and, in some instances, for weeks. The Maryland regiments furnish a majority of the runaways. A large proportion of them are Baltimoreans or Marylanders, and consequently have many relatives and friends, and are familiar with the city, which enables them to elude the guard, which is frequently despatched to search for them. On yesterday there was quite a number of them in the station-house, who were picked up in a very tired condition.

ARRIVAL OF MORE SICK SOLDIERS.—On yesterday morning the steamer Donaldson arrived in port, having on board three hundred and sixty sick soldiers of the Federal army on the Peninsula. The steamer left the town of Cumberland, on the Pamunkey river, on Tuesday morning. Most of the sick are recovering, and it is expected that in a few days the majority of them can be sent to their homes. Of those who arrived here on Monday in the steamer "State of Maine," 415 have been sent to Philadelphia by railroad. The remainder of them are in the hospital at Patterson's Park. Another boat-load is expected here to-day. Within the last twenty four hours the Deputy Marshal has passed from and through the city fourteen hundred sick soldiers, *en route* for their Northern homes.

A NEW STEAM FIRE ENGINE.—The City Council, by joint resolution, has authorized the Board of Fire Commissioners to purchase a new steam fire engine, of light draught, to take the place of No. 6 engine, now in use, which has proved too heavy for the service in this city. During the past year engine No. 6 has been in use nineteen times, at a cost for repairs of over $500; while engine No. 1, of lighter draught, has been in use thirty-four times, during which time the cost for repairs has not exceeded $500; thus demonstrating that light draught engines are far more serviceable than heavy ones.

PUBLIC HYDRANTS.—The following resolution was introduced in the First Branch of the City Council yesterday afternoon by Mr. Evans:

RESOLVED by the Mayor and City Council of Baltimore, That the Water Board are hereby directed, as the necessities of the citizens may demand, to place public hydrants in such localities as in their judgment may be deemed expedient, and that all such public hydrants shall be so arranged as only to discharge water when the lever or handle is held up.

DEATHS OF SOLDIERS.—James C. Wells, private, of Company I, 24th Virginia regiment, and Thos. Jones, private, of Company H, 5th North Carolina regiment, both Confederates, died yesterday at the National Hotel hospital, of wounds received at the battle of Williamsburg. Their bodies were given to friends for interment, by consent of the Government. Private John C. Forney, of Company I, 6th New Jersey regiment, wounded in the same battle, died at the same place. His remains were interred at Loudon Park Cemetery.

UNION CITY CONVENTION.—This body convened last night in Temperance Temple. It was permanently organized by the selection of Archibald Stirling, Esq., President; Wm. S. Crowley and H. Stockbridge, Vice Presidents; J. H. Lloyd, Recording Secretary, and D. Ramestock, Corresponding Secretary; Treasurer, I. Debord. A business committee was appointed, when the Convention adjourned to meet on Wednesday night next.

RESUMPTION OF BUSINESS.—We notice that Mr. S. S. Mills, whose business was stopped some months since, by the Government, has resumed, and he now offers to do all kinds of book and job printing in the best and most expeditious manner. His card in another column will explain itself.

BEATING HIS WIFE.—Patrick Kelly was yesterday taken into custody upon the charge of beating his wife. Justice Showacre sent him to jail for Court.

ASSAULT.—Thomas Graham was yesterday before Justice Johnson, upon the charge of assaulting Herman Booth. He was committed for Court.

Amusements.

HOLLIDAY STREET THEATRE.—A grand revival of the *Octoroon* will be presented at the Holliday Street Theatre to-night, introducing Mrs. J. H. Allen in her great impersonation of Zoe, as played by her originally in New York over one hundred nights, where she received the most lavish praise from the critics of that city. It will be played this night only, as several new pieces are in preparation—two of which will be offered to-morrow evening for the farewell benefit of Mr. J. H. Allen. Previous to the *Octoroon*, Mr. Allen will appear in his great impersonation of Dick Dashwell, in the two-act petite comedy, entitled *My Aunt, or Love and Champagne*, in which a celebrated drunken scene occurs, which, in reality, formed the basis of the drunken scenes in the *Toodles*. The *Nabob at Mechanic* was received last evening by a crowded audience, and gave general satisfaction. We cause our readers will bear in mind that these excellent *artistes* remain only three nights longer with us and we trust they may be welcomed with full houses. By all means, let their benefit be a bumper. Seats can now be secured.

PROCEEDINGS OF THE CITY COUNCIL

(Regular Session.)

FIRST BRANCH.—Present—Wm. CROWLEY, President, and a quorum of members.

Mr. KIRKWOOD offered a resolution authorizing the Comptroller to pay to the widow of Lieut. Dr. B. B. Harrison, racing physician to the 17th City Commissioners to interrupt the street cars on the Canton Company has complied with the ordinance granting permission to lay a railroad track on Alice Anna and Chester streets. Adopted.

The committee of conference to whom was referred the subject of changing the market hours, having attained to no agreement, the Chair appointed A. M., and the hour for closing at 8 o'clock A. M. Adopted.

Mr. EVANS offered a resolution directing the Water Board to erect public hydrants. Referred.

The resolution relative to the celebration of the 4th of July, was returned from the Second Branch amended, placing the affair in the hands of a committee composed of the members of each Branch. Concurred in.

Dr. SCHWARTZE called up the ordinance directing the physician to the Marine Hospital to make a monthly detailed statement of all articles used at the hospital. Passed.

Adjourned.

SECOND BRANCH.—Branch met. Chas. J. BAKER Esq., President, in the chair, and all the member present.

Mr. GEORGE called up the resolution in favor of John Ahem, to pay him $7,914.18 with interest, being a claim against the city. Adopted.

A resolution requesting the Senate and Representatives of Maryland in the United States Congress to use their efforts to secure an appropriation of $100,000 for the deepening of the Patapsco river, was received from the First Branch and concurred in.

Also, a resolution authorizing the purchase of 100 copies of the Maryland Code for the use of the corporation.

Also, a resolution authorizing certain repairs to the old City Hall.

Also, a resolution authorizing the Fire Commissioners to purchase a new steam fire engine of light draught in place of No. 6 engine.

Also, a supplementary ordinance authorizing the laying of a railroad track on Chester street.

Adjourned.

From the New York World, May 21.

THE GUERILLAS IN WESTERN VIRGINIA.

Matters in Western Virginia, notwithstanding the reported success of Gen. Cox, wear an alarming appearance. Elizabethtown, the county seat of Wirt county, within a few miles of the Ohio river, has been burnt by the Confederates; also, the post village of Burning Springs, in the same neighborhood. Palatine, in Marion county, adjoining the Pennsylvania line, has also been destroyed by the guerillas. In fact, they seem to swarm west of the mountains to within a short distance of Wheeling.

Gen. Fremont seems to be peculiarly unfortunate in having this class of difficulties to deal with, as Western Virginia to-day seems to be in the same situation as Missouri during the "hundred days." He, of course, is not responsible for the situation, in either case, and it must chafe a man of his temperament to be annoyed and harassed by gangs of wretched bushwhackers when his honorable ambition is to meet armies in the field. The Confederates are evidently determined to do their guerilla fighting in Virginia, as it is not practicable in any of the other Confederate States.

A SUSPICIOUS CASE.

Correspondence of the N. Y. Evening Post.

TWENTY MILES FROM RICHMOND, May 17.—During yesterday a little affair happened which casts a stigma upon the character of an officer not heretofore considered wholly above suspicion. While Major Lawrence Williams, of the 6th United States cavalry, was riding in advance, he was noticed acting in a suspicious manner; and at a later hour an Adjutant came riding up from the Confederates with a note, requesting the Major to advance his pickets a certain distance, as they were falling back. The Confederate Adjutant was placed under guard, and the Major arrested and sent to General McClellan's headquarters for trial. This is, in short, the best phase of the case, while reports make it much worse.

The French war steamer Gassendi, Captain Gambier, arrived at this port this morning in thirty-six hours from Fortress Monroe. This is the same vessel which recently went on a visit to Richmond, with the French Minister, M. Mercier, on board.—*New York Express.*

The Philadelphia *Inquirer* states that some humane gentleman has proposed to Secretary Welles to charter the Great Eastern for a floating hospital, and have her anchored off Fortress Monroe.

The number of contrabands from the neighboring counties in Virginia, increases daily in this place. They already occupy several houses. Some of them are in destitute circumstances.—*Alexandria Gazette.*

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AN INTERESTING DECISION.

THE GREAT DIVORCE CASE.

ALBERT vs. McKIM.

Judge Krebs, of the Circuit Court, yesterday gave his decision in the case of Mary S. Albert, otherwise known as Mary S. McKim, by her next friends, Eliza M. Albert and William J. Albert, *vs.* Robert V. McKim, an application filed by complainant for a divorce *a vinculo matrimonii* from defendant. The counsel in the case were Hon. Reverdy Johnson, Wm. Schley, Esq., and J. Mason Campbell, Esq., for complainant; and J. H. B. Latrobe, George Wm. Brown and F. W. Brune, Esqs., for defendant. This case has for some years attracted no little attention, partly from the high social position of the parties interested, and partly from the principle involved in the settlement of the case. From the evidence in the case it appears that the lady, the complainant, was married in this city on the 28th of December, 1858, and that she was born December 24th, 1844, being therefore but fourteen years of age at the time of marriage, but stated to be in appearance several years older. The gentleman, the respondent, is about three years her senior.

The bride, after marriage, proceeded immediately from the clergyman's house to her own home in this city, both parties having proposed to keep their marriage secret for a time, and from that hour to the present they have never been permitted to see each other for a moment. The lady, whose father died March 5th, 1854, has resided for several years past in different parts of Europe, and is now living with her mother in Paris. The gentleman is said to be of estimable character, and is now the surgeon of a New York regiment, at present serving on the peninsula of Yorktown. The fortune of the lady, as stated in the record, was at the time of marriage over $15,000 per annum, in her own right, and she is represented to be the prospective heiress to property which will increase her fortune to half a million of dollars. The family of the gentleman is also quite wealthy, and occupies a high social position. The counsel for defendant contended that the marriage is opposed only by the mother of the lady, notwithstanding her name is signed, in her own hand, to the bill of complaint, and that the attachment between them still continues.

The suit was first brought in the Superior Court some time since, and after argument the complainants dismissed their bill before the decision of the Court was made. In 1860 the suit was renewed in the Circuit Court of this city, and the argument was only concluded about two weeks since. An additional interest in the case was created from the number and eminence of the counsel employed on both sides—those for the complainant receiving, it is said, the handsome fee of $15,000, or $5,000 each, one-half contingent upon their success.

Quite a number of the friends of both parties were present yesterday to hear the decision, which is as follows:

The bill in this case is filed by the complainant to obtain a decree of this Court declaring a marriage heretofore solemnized between herself and defendant null and void, *ab initio*, and divorcing her from him. The marriage took place on the 28th day of December, 1858. The complainant has attained the age of fourteen years on the 24th day of that month, and the defendant is 17 years of age on the 19th of August preceding. They were married without the consent of their respective parents, who were opposed to the time. The ground upon which the decree is asked is, that the marriage is void *ab initio* because the parties to it were not of legal age to contract marriage, according to the laws of this State, without the consent of their respective parents. 2. Because it was procured by *fraud*.

The complainant is met with a preliminary objection to the relief which she asks, presented in an exception to the jurisdiction of this Court. The defendant denies that this Court has power to declare a marriage null and void *ab initio* upon the grounds relied upon in the complainant's bill, either in the exercise of its powers as a Court of Equity, or under the law of this State relating to divorces, and that under that law it can only decree a divorce only for the causes mentioned therein, and that fraud does not constitute one of those causes. Assuming, however, that this Court has power as a Court of Equity to declare a marriage void *ab initio* for fraud, and that the power conferred upon it by the laws relating to divorces, to pass a decree divorcing the parties to such marriage, and assuming further that the facts that the parties joined in marriage were not of age lawfully to contract marriage without the consent of parents, and would render the marriage null and void *ab initio*, and thus constitute "a cause," for which the Court might decree a divorce "*a vinculo matrimonii*," I shall proceed to enquire: 1st, were the parties to this marriage of lawful age to enter into the contract of marriage, without the consent of their respective parents. At common law, which is the law of this State, unaffected by an Act of Assembly, the male at fourteen, and the female at twelve years of age, could legally enter into the contract of marriage. It differs in this particular from all the contracts, for they are not held to bind the parties to them, unless they have attained the age.

There are, however, natural and physical reasons which the law has deemed sufficient to justify this difference. When the male, male and female, had respectively attained the above age, their contract of marriage was valid *without the consent of parent* or guardian. Such is the law in this State, unless some act of Assembly can be pointed to by which it has been changed. If there be none such, the marriage of these parties is not void, for the reason that they were not of legal age to contract matrimony.

The complainant insists that by the act of Assembly of 1777, chap. 12, section —, the common law in this particular has been changed, and that according to the legal import and true meaning of that section, *the marriage of a male under 21 years of age and a female under 16 years*, without the *consent of parents* or guardians, *is null and void*.

By that section it is enacted, "that *if any minister shall join in matrimony* any male under the age of twenty-one years, or any female under the age of sixteen years, and not before married, without the consent of the parent or guardian of every such person, personally given, or signified under the hand and seal of said parent or guardian, and attested by two witnesses, he shall forfeit and pay five hundred pounds current money."

The act of Assembly above referred to is entitled "An rules to restrain marriages of persons under age as are mentioned illegal, and consequently void. It is not proper to call this section, or any other part of the said act of Assembly, in *express* terms void, such marriages illegal and void, but it is said that as the said act imposes a penalty upon ministers who marry persons not having attained the ages, without such consent given, the fair and reasonable inference is that it meant by implication to declare such marriage illegal and void. At the time that the rule had been well settled, in Courts of justice, that where the statute prohibits the making of a contract, or the doing of a thing, under a penalty imposed *on the party* making or doing it, the contract or thing the statute contains no express declaration that it shall be so. But this rule is founded entirely upon the *intention and presumption* that the statute so intended, from the fact that it imposed a penalty upon the party so doing it. Now the law permits every inference and presumption to be rebutted, and it does not follow necessarily that a statute intends an act to be null and void, because it forbids the doing of it under a penalty.

The Supreme Court of now in first Lands in 31,500 bags, with Harris vs. Russel, 12th Howard Rep. 91, 95 and 96, says "It does not follow that the unlawfulness of the act was meant by the legislature to avoid a contract made in contravention of it. Where the statute is silent and contains nothing from which the contrary can be properly inferred, a contract in contravention of it is void."

The Court further says in reference to this rule "that it is too many exceptions made upon distinctions very difficult to be understood consistent with the rule, so much that we have concluded that before it can be allowed to be applied in any case of a statute prohibiting things to be done with a prohibition and a penalty or a penalty only, pardoning a thing not which it forbids, that the statute must be examined, as a whole, to find out whether or not the makers of it meant that a contract in contravention of it should be void, or that it was not to be so," and "that it is not to be taken for granted that the Legislature meant that contracts in contravention of it were to be void, that such statutes should always be fully examined before courts should refuse aid to enforce contracts which are said to be in contravention of them."

Assuming that the rule that a act or contract is to be treated as void, because it is prohibited by law under a penalty, applies to marriages that are solemnized without compliance with certain requirements exacted by law under a penalty for the neglect or omission of them, a proposition which is altogether disputed, and which will hereafter be considered, I shall proceed to inquire whether upon the examination of this "Act concerning marriage" as a whole it will be found to contain nothing from which it can be properly inferred that the Legislature do not intend to render void marriages of parties expressly *declaring such marriages void*. Such silence the inference that the law meant to render void the act prohibited under a penalty. In this particular this silence is coupled with the fact that, in its first section, it declares in express terms that the marriage referred to in the said section shall be void. In its second section it imposes a penalty upon persons entering into such marriages; and in its fourth section it imposes a penalty on any minister who shall knowingly celebrate such marriages." Now, if the simple imposition of a penalty upon the parties connected with such marriages shows the Legislature meant that the act should be void, here is a penalty imposed on the parties marrying, and upon the minister who marries them.

If the imposition of a penalty under such circumstances be really a declaration of nullity, here such declaration is made twice most distinctly in that form, and in first section. It seems to me altogether unreasonable to suppose that the Legislature deemed it sufficient for the purpose of signifying that a marriage of the parties mentioned in these proceedings should be regarded by implication the void, merely to impose a penalty upon the minister who joined in marriage the parties thereto, when which it meant to avoid, it not only imposed a penalty *upon the minister*, but also upon the *parties* connected therewith, and added further its express *declaration* that *such marriage should be void*. It is to be observed particularly, *that this law imposes no penalty upon the parties the whom who marry under the age specified* and without consent, and it is exceedingly doubtful of whether the rule in question is at all applicable to such a case as this, because that rule was established in reference to cases in which the penalty which was imposed upon the *parties to the transaction*, which was held to be void, and not as here *upon a third party* doing some act connected therewith, which the Legislature has thought proper to prohibit.

An argument of much force against the position that the law regards the marriage of persons under the specified ages as void, may be based upon the phraseology of the 5th section, which refers to these marriages, as contrasted with that of the 3rd section, which imposes a penalty upon a minister who officiates in the marriages which by the first section are expressly declared void. In this last section the words are, "If any minister shall *violate the rites of marriage* between", &c., whereas the language of the 9th section is, "If any minister shall *give in marriage* any male," &c. In the case of the marriages expressly declared void there is nothing more than *the celebration of the rites*; but in the case of persons under specified ages they are "actually joined in marriage by the minister." In the former it is the "celebration" of the rites which is punished; in the latter, the "joining in marriage." In regard to marriages that were expressly declared void, the action of the minister was *nothing more than the performance of the ceremony*; in regard to those which it is insisted are not made void by express declaration, the parties are joined in marriage.

But when the act which, it is said, the Legislature intended to make void is considered, and the reason why it should have so intended are sought for, it will be found that the presumptions against the position that it intended to declare these marriages void will be greatly strengthened. The act is that of persons, males and females, under the ages of 21 and 16 years respectively, marrying without the consent of parents or guardians. Is this something which the law regards as abhorrent to proper sentiments and feelings, and to be condemned by enlightened reason? By no means. The common law authorizes and authorized it after they had respectively attained the ages of 14 and 12. This Act of Assembly does not discountenance the marriage of persons who have attained the common law ages.

It simply requires them, when they are inclined to enter into matrimony, to ask and obtain the consent of their parents or guardians. If there was anything repulsive to virtuous sentiments, immoral, or violence in such marriages, the simple consent of parents could not remove it. The impropriety in parties entering into such marriages, which the Legislature meant to condemn, was their so doing without seeking the advice and opinion of their parents in reference thereto, and obtaining their consent.

The evident policy and purpose of the law was to aid parents in some effective way in maintaining their rightful influence and authority over their minor children, in a matter so important to their future happiness and welfare as marriage.

The law requiring all marriages to be solemnized by a minister, went a step further for the purpose of accomplishing the purpose above suggested, and required him before he joined in marriage persons not having attained the specified ages, to ascertain whether they had the assent of parents or guardians to their marriage. His neglect to do so is punished with a severe penalty. The law undoubtedly designed to discourage and throw obstacles in the way of these marriages without such consent, and that with a view to secure parental power, influence, and control, in reference to a matter so serious and important. In my opinion, however, it did not intend to signify, by implication or otherwise, any injention that such marriages should be regarded as void.

If the rule that when the Legislature imposes a penalty upon the doing of an act, it means by so doing to signify that the act shall be presumed to be void, is to be applied to law concerning marriage, and of course the act of Assembly above referred to, then in my opinion, reasons suggested by an examination of the act of Assembly in all its parts and stated above, are sufficient to show that such effect should be presumed to have been intended by this law.

But it is insisted that this rule is never applied by the Court in statutes concerning marriage, so as to vacate the marriage in case of the omission of requirements exacted under the penalties.

It is to be borne in mind that this act of Assembly contains no words expressly declaring these marriages void. Does this rule then apply to the statutes concerning marriage? The Judge who pronounced the decision in the case of Catcall vs. Sweetman—Robertson's Ecclesiastical Rep., 317—eminent for his extensive learning and the soundness of his opinions in all matters touching the law administered in the Ecclesiastical Courts in England, and especially in regard to the subject of "divorce," after having made a full examination of the cases upon this point, says: "It appears that there never has been a decision that any words in a statute as to marriage, though prohibitory and negative, have been held to infer a nullity, unless that nullity was declared in the act; and that reviewing the successive marriage acts it appears that prohibitory words, without a declaration of nullity, were then assigned reasons why this rule of interpretation is not in accordance with the constructions which some other acts relating to other subjects have received; and including amongst them the reason, "That a legislative enactment to annul a marriage *de facto* is a penal enactment, and therefore to be construed accordingly to the acknowledged rule most strictly."

This question is by no means new in the Courts of this country, but has been the subject of repeated adjudication. In the case of Milford vs. Worcester, Chief Justice Parsons declared in reference to this point, though it was not necessary in that case that he should decide it: "When a minister shall solemnize a marriage between parties who may lawfully marry, although without publication of bans, and without the consent of parents or guardians, such marriage would unexceptionably be lawful, although the officer would incur a penalty of fifty pounds for a breach of his duty." The above case was decided in 1808 in the Supreme Court of Massachusetts; and in 1854, the same Court, in the case of Parton vs. Hervey, reported in 1st Gray, indorses and adopts the language of Chief Justice Parsons, in a case in which the Court discussed and decided this very question, arising upon the Constitution and the laws of that State, containing views and provisions perfectly the same as those found in this act of 1777. In this case, in 1st Gray, the marriage was impeached, both upon the grounds of fraud and deceit, and because it was entered into without the consent of parents. The Court says:—"By the Common Law, both in England and in this country, the age of consent is fixed at twelve in females and fourteen in males. Contracts of marriage between infants, being both of the age of consent, are as binding on the parties as if made by adults. But it is urged that this rule of law is not in force in this commonwealth, because, by our statute, ministers of the Gospel and magistrates have always been prohibited, under a heavy penalty, from solemnizing marriages of males under 21 and females under 18 years of age, without the consent of their parents or guardians."

But the Court says the effect of these and similar statutes is not to render such marriages, when duly solemnized, void, although the statute provisions were not complied with. They are intended as binding only upon ministers and magistrates, and to prevent as far as possible, by penalties on them, improper marriages from being when the prescribed conditions and formalities have not been fulfilled. But in the absence of any provision declaring marriages not celebrated in a prescribed manner, or between parties of certain ages, absolutely void, it is held that all marriages regularly made, according to the common law, are valid and binding, although made in violation of the specific regulations imposed by statute—And the Court adds—"Such is the effect given to similar statutes in England." King vs. Birmingham, 8 B. and C., 29 Eng., Judge Shaw, and the five other Judges of that Court, all concurred in the foregoing decision. In Pearson vs. Hoover, 6 Halstead, A. J. Rep., Justice Lord says: "Our statute prohibits ministers of the Gospel from solemnizing the marriage of persons under age without the consent of parents or guardians, under a heavy penalty; but this does not render the marriage void; it remains sacred and inviolable."

The 29th section of the statute of Arkansas entitled "Marriage," prohibits any minister, under a severe penalty, from marrying minors under specified ages without the consent of parents or guardians. Yet the Court in the case of Smyth, 8 English Rep., 699, says:—"The law, which esteems marriage as the most solemn, the most binding and important of all contracts, does not punish the parties who violate the ages prescribed by the 29th section, by avoiding the contract; but it policy is to discourage such marriages, and to punish those who engage in celebrating them without the consent of the parent or guardian of the minor."

Bishops, in his learned work on "Marriage and Divorce," after a careful and complete examination of the authorities on this point, says: "If we remember that marriage existed before our statutes; that it has ever been regarded as a thing to be favored in the law; that it is one of natural right, we shall see very plainly that whatever direction our statute may give concerning its solemnization, it should be held good, though not solemnized according to the direction; consequently the doctrine has become established, that a marriage good at the common law is good notwithstanding the existence of any statute on the subject, unless the statute contain express words of nullity. If a statute requires a parental consent, it does not expressly make the marriage void celebrated without it. It still will be good, though the consent is not obtained. Under the law, such marriages are valid, based upon this question, we will find that in that interval brought, by successive changes in legislation, to the proposition which is sustained by the above reasoning and authorities. Prior to a British statute passed in the Edwards VI. reign, should be found, which enacted that, without the consent of the father, the marriage was declared in express terms void. Here the nullity Courts, in the construction of this statute, inclined to ways to modify the hardships, and to mitigate the evils which could result from a strict interpretation of nullity thus created, until at length Parliament saw the propriety of repealing it; and the law there is such now that the marriage of the consent of the parents and guardians, though required by law, does not in any case render the marriage void.

I am, therefore, of opinion that, as the act of Assembly of persons not having attained the ages therein specified, it does not by implication render such marriages void, and that these parties having respectively attained the ages at which persons might legally marry before said act was passed, their marriage is not void because they had not respectively attained the ages specified in it.

I am now to inquire whether this marriage is void upon the ground of *fraud*.

It is charged in the bill to be void—

Because of fraudulent acts and representations of the defendant, by which the complainant was induced to enter into the contract of marriage;—

Because of the suppression of material facts and of false representations, by which the ceremony was induced to perform the ceremony of marriage.

The general charges as spread out in specifications in the bill, are sufficient to avoid the contract of marriage, "that when the complainant was deceived, and imposed upon by him; that her consent to marry him was procured by false and fraudulent representations; that he overcame her mother as harsh towards him, and tyrannical towards her, and he complained especially that her mother had forbidden him the house, and had treated him badly, and spoke of the complainant) did not act with becoming spirit, her mother would keep her and treat her always as a mere child; and he even went so far as to poison the mother necessary motives; and that he extorted from her a promise which she faithfully kept, not to consult any of her family, or companions, or friends, as to what had passed between him and her, and that he was particularly enjoined *after the engagement to marry had taken place*; and that by so depicting the cruel treatment of her mother, as he called it, towards him, and towards herself, he excited her sympathy, that he thus poisoned the mind of the complainant against her mother."

The specifications under this head are that the defendant did not inform the mother of Mr. Adams of the tender age of the complainant, and that her mother was deceively opposed to said marriage and had not given her consent thereto, and did not inform him that his parents were opposed to the said intended marriage, and had not given their consent thereto, and that he stated in the presence of the witness and clergyman, with the intent that the same should be reported to said minister, that the complainant was above the age of sixteen years, and that he stated to the said clergyman that there was no objection on the part of the family of either. The defendant admits that as to the matter in regard to which the charge is made that he gave no information to the clergyman, that the charge is true; but he denies that he said any thing to his statements concerning the age of the defendant, and that he gave no objection as aforesaid. But if such statements had been made, neither the making of them nor the withholding of information in regard to the said matters could in any wise affect the validity of said marriage.

If I am correct in the opinion I have expressed above in regard to the respective ages at which males and females may lawfully marry in this State, and that no consent of parents is necessary to make the marriage of persons of lawful age, it was not required of the defendant to state to the said Mr. Adams any thing in regard to the ages of himself and of the complainant, or as to whether their parents had consented to their marriage, or were informed in regard to it. Nor could the fact that he had made the statements referred to the complainant's age, and that there was no objection on the part of their respective families to the marriage, affect in any manner their right to marry.

They had attained the age at which they could lawfully marry, and it was not necessary that the minister should be informed in regard thereto, or as to whether their parents had or had not consented to their being married. I am, therefore, of opinion that the complainant is not entitled to the relief which she asks upon any ground of fraud. The attention of the Court having been called in the bill exclusively to fraud and circumstances which occurred prior to and at the time of this marriage, and relief being in nowise asked upon the ground of anything done by the defendant since, I have confined my view solely to the charge of fraud.

Whatever may be the state of feeling of the complainant at this time, whether of alienation or otherwise, unless it is be caused by the misconduct of the defendant before the marriage, the Court would not take it into consideration. The Court cannot perceive in his acts and conduct brought to its view anything to warrant in condemning this marriage as contrary to law, or to be interfered with in any manner, or to justify the feelings expressed by the complainant. This case has been argued with great ability, earnestness and zeal by able and eminent