

sentence of divorce is not so properly a dissolution of the contract as a declaration of its original absolute nullity. (*t*) Hence, it seems to have been generally admitted, that the constitutional restriction, which declares, that no state shall pass any law impairing the obligation of contracts, does not extend to a contract of marriage; (*u*) and, therefore, that the general assembly may, by law, grant a divorce from the bonds of matrimony, with all its consequences, or in a limited manner, or upon any terms deemed most proper; (*w*) or they may sanction a separation, by authorizing the appointment of a trustee to take care of the estate of a fugitive convict for the benefit of his wife and children; (*x*) or by making provision for carrying into effect articles of separation. (*y*)

But although children may be thus deprived of capacities, which would have been incident to their legitimacy, and be bastardized, as a consequence of the divorce of their then living parents; (*z*) yet, in regard to a law, which, without affecting a then existing contract of marriage, or which has been passed after its dissolution by death, declares the issue to be bastards, other considerations arise. Legitimacy is a legal capacity whereby property may be acquired by descent, &c; or, indeed, it may itself be regarded as a valuable kind of property, or a privilege of which the general assembly cannot constitutionally deprive any one, since the legislature cannot so judicially act upon the case as to deprive him of any legal capacity, privilege, or property with which he has been legally invested. (*a*) But, on the other hand, it may be admitted, that the General Assembly may, prospectively and without prejudice to the rights of others, declare a marriage to be valid, and any bastards to be legitimate, and thus confer upon such individuals a new and additional capacity; upon the same ground, that they may grant to an alien a capacity to take and hold in any case which may thereafter happen in like manner as a natural born citizen. (*b*)

It may also be admitted, that the general assembly may, consti-

(*t*) Bac. Abr. tit. Marriage and Divorce, E. 3; Ryan v. Ryan, 1 Ecclesi. Rep. 274; February 1777, ch. 12, s. 15.—(*u*) Dartmouth College v. Woodward, 4 Wheat. 629, 693.—(*w*) 1790, ch. 25; 1807, ch. 20, 30, and 103; 1818, ch. 56.—(*x*) 1821, ch. 80.—(*y*) Com. Dig. tit. Parliament, H. 3; Eyre v. The Countess of Shaftsbury, 2 P. Will. 112; 1822, ch. 100.—(*z*) 1 Blac. Com. 457.—(*a*) 4 Inst. 36; Dash v. Van Kleeck, 7 John. Rep. 504.—(*b*) 4 Inst. 36; Domat Civil Law, part 2, b. 1, tit. 1, s. 2, art. 31; 1784, ch. 6; May, 1788, ch. 8; November, 1788, ch. 21; 1807, ch. 73; 1808, ch. 13; 1814, ch. 120.