

It is thought that it would probably be within the powers of the Commonwealth Parliament to enact that all such marriages shall be valid, but that validity would probably not be recognized outside Australia if the foreigner was not, by the law of his country of domicile, capable of contracting the marriage. Such legislation, however, would not go far to improve the position, and, while Imperial legislation extending to all the Dominions would advance matters a little further, it is considered that it would be inadvisable to interfere with the established rules of international law in this connection.

In order that some action might be taken which would lead to a satisfactory settlement of the question, my Ministers have suggested that His Majesty's Government might be asked to consider the desirability of discussing the matter at an Imperial Conference, with a view to international arrangements being made which would be acceptable to all parties concerned; and I should be glad if you would be so good as to take the necessary steps to give effect thereto.

I have, &c.,
FORSTER.

(b.) From the SECRETARY OF STATE to the GOVERNOR-GENERAL.

(No. 133.)

MY LORD,—

6th April, 1923.

I have the honour to acknowledge the receipt of Your Excellency's despatch, No. 381, of the 4th October, regarding the validity of marriages contracted between Australians and foreigners, and to request you to inform your Ministers that the question of the validity of marriages between British subjects and foreigners has on many occasions in the past formed the subject of consideration by His Majesty's Government.

2. As regards such marriages contracted in foreign countries according to the *lex loci*, it has long since been found necessary, in order to satisfy the requirements of foreign marriage laws, to authorize His Majesty's consular officers to issue certificates in individual cases, varying from a statement that the publication of banns in this country is not required in the case of such marriages, to statements that, the parties having gone through the antecedent formalities required by law for enabling them to be married at His Majesty's consulate under the provisions of the Foreign Marriage Act, 1892, there is no obstacle to the celebration of their marriage. Certificates according to the particular requirements of the foreign law concerned have in this way for a good many years past been issued by His Majesty's consular officers in France, Belgium, Germany, Switzerland, Italy, Hungary, and Sweden. On the other hand, in the case of marriages contracted in this country, the French Government have since 1904 authorized French consular officers in this country to issue certificates to French citizens marrying British subjects, to the effect that the formalities of French law have been complied with; while, in the case of Belgium, by an agreement of November, 1888, a similar certificate is issued by the Belgian legation.

3. Under the provisions of the Foreign Marriage Act, 1892, and of the Foreign Marriages Order in Council, 1913, His Majesty's consular officers are in many cases empowered to solemnize marriages between parties of whom one is a British subject. This Act and Order in Council form the subject of Chapter XXX of the Consular Instructions. In this connection reference is invited to Viscount Milner's despatch, Dominions No. 506, of the 17th December, 1920, and connected correspondence, as to officers who are empowered to issue the certificates required by Article 10 of the Foreign Marriages Order in Council, 1913. I enclose a copy of a printed memorandum,* which, while summarizing in a convenient form the formalities to be observed under the Act and Order in Council, exhibits also information which has been compiled as regards foreign *lex loci* marriages and marriages between British subjects and various classes of foreigners. Copies of this memorandum were forwarded in the late Viscount Harcourt's despatch, No. 468, of the 30th July, 1914.

4. On the 29th November, 1906, the Marriage with Foreigners Act, 1906 (6 Edw. VII, Ch. 40), was passed. This Act, in section 1, provides that any British subject desiring to be married in a foreign country to a foreigner according to the law of that country may give notice to the Registrar, or, if abroad, to the marriage officer—i.e., His Majesty's consular officer—and apply for a certificate that after proper notices have been given no legal impediment to the marriage has been shown to exist. In section 2, as regards marriages in the United Kingdom, it is provided that, where arrangements have been made with a foreign country for the issue by the proper officers of that country of certificates that after proper notices have been given no impediment according to the law of that country has been shown to exist, His Majesty may by Order in Council require the production of such certificate before the marriage can be solemnized. Section 3 provides for the issue of an Order in Council making general regulations prescribing the forms to be used.

5. After the passing of this Act a considerable correspondence, which extended over several years, took place with foreign Governments with a view to ascertaining the possibility of giving effect, in the case both of sections 1 and 2 of the Act, to the arrangements contemplated. While it was found that in the case of some countries a certificate of the nature contemplated by section 1 was unnecessary, and that, in the case of some, no arrangements of the nature contemplated by section 2 were possible, the correspondence showed that in the case of a number of foreign countries such arrangements were possible, though the requirements of the various foreign laws created difficulties as to the forms of certificates which would be required. Concurrently with this correspondence His Majesty's representatives abroad were instructed to obtain and communicate to the Foreign Office the texts of the marriage laws of foreign countries, with a view to a more complete study of the question, and these laws as received were translated, and have been published in Parliamentary Paper (Miscellaneous) No 11, 1911 (Cd. 5993), of which a copy is enclosed.

6. As the outcome of the correspondence referred to above, the preparation of the form of certificate to be given by the Registrar (and, *mutatis mutandis*, by His Majesty's consular officers)

* Foreign Office Memorandum entitled "Marriages Abroad and in the United Kingdom" (not reproduced).