MARRIAGE WITH A WIFE'S SISTER

NOT FORBIDDEN BY

THE WORD OF GOD.

MARRIAGE WITH A WIFE'S SISTER

NOT FORBIDDEN BY

THE WORD OF GOD;

AND

THE DENUNCIATIONS EMPLOYED AGAINST IT FROM THE 18TH CHAPTER OF LEVITICUS, BY THE REV. JOHN KEBLE, M.A., IN A TRACT ADDRESSED TO "ENGLISH CHURCHMEN AND CHURCHWOMEN," "AGAINST PROFANE DEALING WITH HOLY MATRIMONY, WITH REGARD TO A MAN AND HIS WIFE'S SISTER;"

PROVED TO BE UNSCRIPTURAL AND A FALSE ALARM;

IN

A LETTER

TO THE

REV. CHARLES B. DALTON, M.A.,

RECTOR OF LAMBETH, AND RURAL DEAN.

BY THE

REV. J. S. JENKINSON, M.A.,

VICAR OF BATTERSEA.

"To the law and to the testimony: if they speak not according to this word, it is because there is no light in them."—ISAIAH viii. 20.

"Prove all things, hold fast that which is good."—1 THESS. v. 21.

LONDON:
J. HATCHARD AND SON, 187, PICCADILLY.
1849.

LONDON:
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My dear Sir,

I return, with many thanks, Mr. Keble's tract against profane dealing with holy matrimony in regard to a man and his wife's sister. But you must allow me respectfully to decline subscribing my name to the petition lying at your house for signature in opposition to the Bill which is now before Parliament.

After a careful perusal of the Tract, and thorough consideration of the whole subject, I really cannot see anything nefarious or profane in the accomplishment of the object which that Bill contemplates.

I was at once led to examine the arguments deduced from Scripture, because if such marriages are decidedly forbidden, we must, as Christians, admit that the whole controversy is authoritatively concluded.

The 18th chapter of Leviticus is referred to as the portion upon the right interpretation of which the dispute must be settled. Fully aware of this, Mr. Keble labours hard to make it speak the language which would support his view, and thus commences his remarks upon it ;—" Certain marriages are forbidden, as specially offensive to God." And a little further on, he says, " Such marriages were among the crimes which drew down God's heavy anger upon the Canaanites. ' Defile not ye yourselves in *any of these things*, for in *all these* the nations are defiled which I cast out before you : and the land is defiled : *therefore* I do visit the iniquity thereof upon it, and the land vomiteth out her inhabitants. Ye shall therefore keep My statutes and My judgments, and shall not commit *any of these abominations*, neither any of your own nation, *nor any stranger that sojourneth among you :* (for *all these abominations* have the men of the land done, which were before, and the land is defiled :) that the land spue not you out also, when ye defile it, as it spued out the nations that were before you. For whosoever shall commit *any of these abominations*, even the souls that commit them shall be cut off from among his people. Therefore shall ye keep Mine ordinances, that ye commit not any one of *these abominations*, which were committed before you, and that ye defile not yourselves therein : I am the Lord your God.' "

Having thus invested his subject with the terrors of the Lord, and awakened our fears to the utmost lest we provoke Him, as the Canaanites did, to pour down his heavy anger upon us, he proceeds to show how a marriage with a wife's sister was one of the abominations which defiled the land of Canaan, and for which the inhabitants were cast out. Let us see what real ground Mr. Keble has for making such awful assertions, the effect of which must be to alarm the timid and uninformed, and prevent a calm and dispassionate discussion of this important question.

In verse 18 of that chapter we find it thus written :—" Neither shalt thou take a wife to her sister to vex her, to uncover her nakedness, beside the other in her lifetime."* " Now we are not quite sure," says Mr. Keble, " that this verse is rightly translated." Of other variations in the rendering, he remarks, p. 18, " One is that of the Karaites, or opponents of traditions among the ancient Hebrews. They considered the verse, as we may see in the margin of our Bibles, to interdict polygamy altogether : " Thou shalt not take one wife to another, to vex her . . . . beside the other in her lifetime."

Our translators, however, (you will agree with

* " Both of them together."—JARCHI.

" A woman in the life of her sister thou shalt not take."—TARGUM OF JONATHAN.

me, no mean judges,) have given the preference to the former reading by adopting it in the text; though they very properly insert the marginal reading as one which a body of ancient Jews insisted upon. They seem to have preferred the one adopted in the text on strong grounds, being manifestly guided by the original signification of the Hebrew terms, and the translation in the Septuagint.

In looking at Taylor's Hebrew Concordance on the word rendered sister, אֲחֹתָהּ,* I find the term taken almost invariably in that sense, except in such passages as Exod. xxvi. 3—6, and Ezek. i. 9, where it has the sense of "one towards another, or together," literally, as it were, "each to her sister," (Exod. xxvi. 6,) the root signifying "any creature or thing which is of the same sort with, or corresponds to, or in connexion with, another." In the masculine form it always means a brother, and in the passage in question, where it is of course in the feminine, Taylor renders it sister, (see No. 86,) quoting some parallel places, Judges xv. 2, Jer. iii. 3—7.

Again, in consulting the Septuagint version, we

* Et uxorem ad *sororem* (cum sorore) ejus non accepies ad lacessandum ad revelandum nuditatem ejus super eam in vita (vitis) ejus.—MONTANUS.

Sororem uxoris tuæ in pellicatum illius non accipies, nec revelabis turpitudinem ejus adhuc illâ vivente.—VULGATE.

find the verse thus translated:—*Γυναικα επι αδελφη αυτης ου ληψη αντιζηλον αποκαλυψαι την ασχημοσυνην αυτης επ αυτη ἔτι ζωης αυτης.* Thou shalt not take a wife (or woman) to her sister, &c.; and this authority I think you will allow may not be despised or disputed, if we remember what use our Lord and his apostles made of the Greek version. Our translators, there can be no question, always felt the force of the divine sanction of that translation: though they strictly adhered to the Hebrew text as of still greater authority.

But that the translation they gave is the correct one, and that the passage is not a prohibition of polygamy, as the Karaite Jews contended, and as many like them in our day affirm, is established by the fact that the custom of having a plurality of wives was never forbidden under the Old Testament. There can be no doubt it was positively allowed, if we consider the case of the patriarch Abraham—the Friend of God, and Father of the faithful. In Gen. xvi. we read that God heard the affliction of Hagar, and assured her himself that *her posterity* should be most numerous, and should "dwell in the presence of his brethren." And as a proof that it was not at all on account of Hagar being an oppressed woman or concubine, let it be observed how God speaks to Abraham afterwards on that very subject. "As for Ishmael I have heard thee: behold, I have

blessed him, and will make him fruitful, and will multiply him exceedingly; twelve princes shall he beget, and I will make him a great nation." (xvii. 2.) And again, in chap. xxi. 13, after having spoken of Isaac as the first-born, he adds, "And also of the son of the bondwoman will I make a nation: *because he is thy seed.*"

But, indeed, the general practice respecting marriage among the Jews, from that time till the period of the captivity, and also more particularly the total absence of any law against polygamy—that it involved no penalty—nor exposed the parties concerned even to so much as a reproof from the divine Legislator, sufficiently proves that it was, if not sanctioned, at least permitted.

Supposing, then, the 18th verse be wrongly translated, it could not be intended, as the Karaites affirmed, (for want of better authority to support their views,) to interdict polygamy. Had God intended to discourage his chosen people from that practice, we may venture to say he would not have taken *such an occasion* to announce the prohibition. The practice would have been noticed in a more formal and decided manner, and not introduced with denunciations of crimes peculiar to the heathen. Assuredly, there would have been a reference to the past, and some reason assigned for permission to some of God's most eminent servants for their departure from

the original law given at creation, accompanied with an authoritative announcement of his intention to require for the future strict and undeviating conformity to that law.

This would have been the more necessary, if it be considered how powerful is the force of long habit, and how difficult and almost impossible it is to reform those manners which have existed for a length of time, and are congenial to the inclinations and mode of life of those who practise them; unless some motives of an overwhelming nature are brought to bear upon them.

Mr. Keble gives another construction of this verse; but the objections to it would be even still greater; "a woman to her sister thou shalt not take vexatiously as long as she (i. e. the woman first mentioned) liveth."

This cannot be admitted, for the sister is palpably the antecedent to the words, "as long as she liveth," and to conceive that it is a prohibition not to take a woman as long as *she* liveth, &c., appears to me unintelligible in such a connexion. It is trifling with the sacred text, and only proves that the writer is hard driven for a good interpretation of the passage, other than the one we possess. He appears to be constrained to offer two bad translations for the purpose of getting rid of the obvious one. Whereas, had he consulted the original and the septuagint, he would

have found himself led irresistibly to adopt that which our translators have in their great wisdom preferred.

Mr. Keble, however, has his misgivings when he observes, " I do not say that either of these versions is free from difficulties." In another place, indeed, he is induced to allow that the version in our Bibles may be right after all; for he makes this admission, (p. 18,) " Nor do I believe that oriental scholars in general see good reason to doubt it."

The conclusion, then, I am led to is that the 18th verse means simply what it asserts, viz. that a man was not allowed his wife's sister *during his wife's life-time;* and especially on the ground that it would be unkind and vexatious to her, and that it would interfere with the harmony and happiness of the family, of which there had been sufficient demonstration in the history of Rachel and Leah in times past.

And here it is most important to observe that *marriage* is not so much as mentioned in this chapter, and I am the more satisfied that nothing of the kind is intended, from the consideration that the abominations so severely denounced were all of the very worst kind. See v. 20—23.

The rigidness also of the Jewish law makes it still more probable that marriage is not intended, but rather a violation of its sacred rights. For

although more than one woman was allowed under the Jewish dispensation, yet illicit intercourse was always severely punished. Adultery, or even seduction of one betrothed, was punished by the death of both parties; and if a young woman was not betrothed, the man who seduced her was obliged to make large compensation or take her to himself, and make provision for herself and children.*

Now the Canaanites were utterly regardless of any of those laws and regulations which tended to uphold and cement social life. They violated all laws of morality and decency. Adultery, fornication, (i. e. as the Jews regarded it) incest of the worst kind, and the foulest abominations were common amongst them; and it is such as these which, I conceive, are alluded to in this chapter.

Mr. Keble rests much on the prohibition in the 16th verse, of a man taking his brother's wife, and thinks that the man taking his wife's sister is a parallel case.

But this is on the supposition that marriage is intended, not adultery. That the woman was not a widow, as Mr. Keble interprets, is to me most obvious. The verse clearly means what it declares, his brother's *wife*, " Thou shalt not take thy brother's *wife*." This enormous sin the Canaanites were doubtless guilty of amongst others.

* Deut. xxii. 28, 29. Exod. xxii. 16, 17.

All the sacred ties of social life were most grievously outraged. The wife's sister, v. 18; the brother's wife, v. 16; a wife's nearest relations, v. 17; an aunt, a niece, a sister, half sister, a father's wife, a step-mother, and even the natural mother, v. 7, were not safe from their unnatural lusts; and even acts of a still more disgusting and revolting nature, were perpetrated by those abandoned nations. Thus they defiled the land, which became as it were sick of them, and "spued them forth."

Adultery with a brother's wife was surely not the least shameful and abominable in the sight of God. But if this prohibition in v. 16, referred only to a brother's widow, then the great wickedness would not be apparent, because a man was required by the law, under certain circumstances, to marry his brother's widow. The Jews seeing it in this point of view, would not regard it as a grievous sin and a crime, to be classed with those abominations which were charged upon their neighbours, and from which they were so awfully warned by God himself.

The divine command to take a brother's wife after his death, in case of there being no issue, necessarily implied that it was not unlawful under other circumstances, if he desired it. What was enforced by God himself could not be wrong in itself, and more especially could not be a crime

such as was laid to the charge of the Canaanites,* that it defiled the land.

It is, then, I should think, beyond all dispute, that the wife of a living brother is intended and that it would be a heinous sin to take her, a grievous injury to the brother, and an atrocious disregard of all the laws of society.

Mr. Keble, therefore, is in no way justified in paraphrasing the 16th verse as he has done, "Thou shalt not *marry* thy brother's *widow*." He assumes first, what he evidently cannot prove, that marriage was intended; and, secondly, that the woman was a widow; and thus by inference makes the man who should marry his wife's sister, an offender upon whom God's heavy anger must fall.

But let him show that the language which he seems to shrink from uttering, (p. 14,) though it be God's word, is equivalent to marriage. "Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness;"† i. e., in other words, thy

* If the Canaanites were denounced for taking a brother's wife *after death*, what would they think when they saw a Hebrew doing the very same thing *by God's express command?*

If children made all the difference, how is it that they are not mentioned in this passage, when that simple difference rendered, what would be obedience to a divine command in one instance, a sin of the blackest die in the other, so that it would "defile the land?"

† Nuditas corporis humani propalam turpis et pudenda

brother's *property*, who, therefore, must be yet alive.

If there be any force in these remarks, and to my mind they have the greatest possible force, the parallel attempted to be drawn between verse 16 and verse 18 is entirely destroyed.

But what says the 6th verse, and on this is hung all the reasoning on the degrees of affinity prohibited in marriage?" "None of you shall approach to any that is of kin to him to uncover their nakedness, I am the Lord." In the margin, "near of kin" is rendered "remainder of his flesh," i. e. says Taylor, "part of his flesh," signifying "relation by consanguinity." Parkhurst says, "any one that remaineth of the same flesh," or "blood with himself." Now if such be the literal meaning, why should a wife's sister be fixed upon, not being related *by blood* at all? Blood relationship is evidently alluded to in verse 6, and the reason is obvious. The commingling of the blood of those who are blood relations tends to produce a degenerate offspring; and in other respects such alliance would be both inconvenient and injurious. There are degrees of affinity indeed named which could not be classed under blood relations, but they are such only as it would shock all sense

censetur maxime partium genitalium, quas natura textas voluit. —*Burtorf* on עדוה.

Ασχημοσυνην—Sept. Pudenda membra corporis humani quæ a pudore nomen habent. Apoc. xvi. 16.—*Schleusner.*

of decency even to think of in the way of marriage.* The cases of the brother's wife and wife's sister have been already explained as acts of adultery of an aggravated character, and therefore are denounced as abominations, irrespective of any relationship by consanguinity. But there could be nothing disgusting and abhorrent in such alliances under proper regulations, and rendered lawful by the death of one party. In our day indeed many

* Although it has been shown that marriage is not intended as it regards the Canaanites, (especially in the case of a brother's wife, whom, if a widow, it was no sin to marry, as the heathen could learn from the Mosaic Law,) yet it by no means follows, that prohibition of marriage with such near relations as mentioned in v. 7—15, was not comprehended in respect to the Israelites, and, in fact, to all mankind on moral grounds, and for the welfare and happiness of society.

If no connexion whatever was to take place between such persons à fortiori there ought to be no intermarriages between them.

The mind of God can, with certainty, be gathered from this passage, that such alliances are highly displeasing to him; and this has been, at all times, the opinion of both Jews and Christians. Indeed, the very nature of such marriages is most repulsive to our feelings and sense of propriety. And if there were no such marked notice and reprobation as we find here respecting any communion whatever, the very law of our nature, which is the law of God as much as that which is the subject of immediate revelation, peremptorily forbids them. Such marriages would inevitably be attended with extreme discomfort and misery, and entail severe penalties on the offspring.

may feel a strong dislike, and even perhaps something more than dislike, for several reasons, to marriages with wives' sisters; yet it is a fact that there are many excellent persons of strict morality and deep sensibility who have no objection to them.

These are the reasons which have induced me to reject Mr. Keble's interpretation of the 18th chapter of Leviticus, and I therefore utterly deny his authority to make use of such awful denunciations against marriage of a man with his wife's sister; holding it up to all "English Churchmen and Churchwomen" as Prophane Dealing with Holy Matrimony. I also protest against turning the Sacred Scriptures to such a purpose, and take upon me to declare that he is not justified in addressing "all serious persons, clergy and laity," in such language as the following: p. 11—"I would earnestly entreat them well to consider this:—lest they find, by and by, that they have been instrumental in bringing the curse of Canaan on themselves, on our church and country." The same reasons also have influenced me not to oppose the Bill before Parliament; for if Holy Scripture does not condemn such marriages, there can be no real objection to the measure.

Arguments drawn from ancient canons, and sayings of pious and eminent men, such as many of the fathers of the primitive church have been,

cannot be admitted as authority, though they command our respect and adoption if proved to be sound and rational, and not opposed to the written word of God.

Much might be said in reply to authorities of that sort—that the canons called apostolical are generally acknowledged to be spurious—that the opinion of Diodorus, Bishop of Tarsus, who was tutor of St. Athanasius, St. Chrysostom, and even St. Basil, was as good and as much to be respected as the opinion of St. Basil himself.* But we should succumb to no such authority, even though the opinion of fathers, and canons, and councils, should all bear the full test of the famous rule of Vincent of Lerins, "Quod semper, quod ubique, quod ab omnibus." We must echo, and strenuously insist upon the words of the prophet. "To the law and the testimony, if they speak not according to this word, there is no light in them." They are but like the traditionists of old who made void the law of God. But if the interpretation I have ventured to bring forward, be according to Scripture—agreeable to the obvious laws of sound criticism—and be supported by common sense and reason, how can any church

* See Biographical Dictionary, 15 vol., 8vo., Lond. 1798. Also Biographie Universelle, 52 vol., Par. 1811—1828. In the former it is stated that he was Master to those individuals, and much is said in the latter to his praise.

authority whatever contravene such evident and incontrovertible truth? Even supposing, however, that such a course of argument were countenanced I would venture to pledge myself that the result would be unsatisfactory and inconclusive. There would be perhaps, as there generally are in all such discussions, as many authorities on one side as on the other.

There are arguments of a different kind, which, after an attentive consideration, appear to me to have much weight in favour of the Bill. I allude particularly to those which have been brought before the public in a few letters from the pens of Champneys, Hale, Gurney,* Villiers, and Hooke, men intimately acquainted with the moral state of our large population.

Believe me,
My dear sir,
Yours, very sincerely,
J. S. JENKINSON.

Vicarage,
April 20th, 1849.

* See particularly Gurney's remarks on the evils arising from compulsory contiguity in contracted dwellings.

LONDON:
G. J. PALMER, PRINTER, SAVOY STREET, STRAND.

REMARKS

ON THE

LAW REGARDING MARRIAGE

WITH

THE SISTER OF A DECEASED WIFE.

BY

A. HAYWARD, ESQ.

LONDON:
W. BENNING & CO. LAW BOOKSELLERS,
43, FLEET STREET.

1845.

LONDON:
C. ROWORTH AND SONS, BELL YARD,
FLEET STREET.

ADVERTISEMENT.

Some years since I was consulted professionally as to the legality of a marriage with the sister of a deceased wife. In investigating the legal question, I was necessarily led to consider the legislative one; and at the request of a friend deeply interested in the subject, I wrote a short pamphlet entitled "Summary of Objections to the Doctrine that a Marriage with the Sister of a Deceased Wife is contrary to Law, Religion or Morality," which was printed for private circulation in 1839, and afterwards reprinted in the *Law Magazine*. This is mentioned to account for any similarity of thought or expression that may be observed between it and the following Remarks; in which an attempt is made to maintain the ground taken in the Summary, against fresh and formidable controversialists.

Temple, Jan. 6th, 1845.

REMARKS

&c.

The question regarding marriage with the sister of a deceased wife, has been recently discussed with great learning and ingenuity; but the most important *fact* brought to light, is the extent of the evil resulting from the present condition of the law. Lord Wharncliffe distinctly pledged himself to prove "not that there are many hundred cases, but that there are thousands of such marriages, which have been contracted since 1835;" in other words, that there are thousands of families unnecessarily exposed to great wretchedness; and the number is notoriously on the increase. It may be as well to explain at once how this has come to pass since 1835.

Prior to an Act (5 & 6 Will. 4, c. 54) passed in that year, a marriage within the Levitical degrees was not void, but voidable: i. e. it might

have been annulled at any time by a suit instituted while both parties were living, but not afterwards. During this state of things, many persons related by affinity within the doubtful degrees, married in the full confidence that no one, as public opinion stood, would undertake the invidious task of disuniting them. The prohibition was thus virtually relaxed, and these voidable marriages acted as a kind of safety valve. Though they were frequent and notorious, the legislature did not interpose in 1835 with the view of stopping them. On the contrary, it being thought hard to keep whole families during perhaps half a century in doubt whether the tie was to be dissolved and the children bastardized, it was simply proposed to mitigate the hardship, by limiting the period within which the legitimacy of the children might be impugned. This was to be fixed at two years from the celebration in regard to future marriages, and six months in regard to marriages already solemnized. It was no part of Lord Lyndhurst's original measure to enact that all future marriages of the kind should be absolutely void, and an enactment to this effect was only suffered to pass unopposed in the House of Commons, upon an express understanding that the subject was to be fully reconsidered in all its bearings at an early period.

Such an enactment, however, did pass, and has thrown fresh difficulties in the way of these marriages, but it has failed to put a stop to them, and has made no change in the general feeling respecting them. Parties who can afford it, repair to a foreign state (Hamburgh or Denmark, for example) where the prohibition does not exist, get domiciled, and marry there. The poor, confiding in their obscurity, get married (or go through the form) in the ordinary manner in their parishes. The mischief in their case is, that, if the couple happen to disagree, they take advantage of the illegality to part. In the case of parties married abroad, there is also great risk. The opinions of the leading members of the legal profession have been taken, but none of them can venture to state positively how such marriages would be regarded by our courts; though the better opinion is that they would be held good. In the meantime, the chance of a disputed succession is hanging over each couple that has ventured on the step.

The facts are proved by the petitions. One numerously signed by the provincial clergy states—

"That, as your petitioners are informed, great numbers of persons among the higher and middling classes of society have resorted to foreign countries to cele-

brate such marriages,—thus proving that the existence of the prohibition, as applied to marriages celebrated here, has no moral effect in discountenancing the practice with parties whose circumstances enable them to evade the law.

" 6thly, That the validity of such marriages, though celebrated in a foreign country, is, in the opinion of many eminent lawyers, at least doubtful; so that each separate example is calculated to disturb the future peace of families, by raising up a doubtful offspring, and exposing them to all the miseries of litigation with their nearest relatives.

" 7thly, That, among the poorer classes, a prohibition so directly at variance with natural impulses, has a direct immoral tendency, by enabling the unprincipled to contract such marriages, and then to repudiate their wives when it suits their purpose; and your petitioners have reason to believe that these effects have already been extensively produced."

In a petition to the House of Lords, signed by seventy-six of the leading firms of London solicitors and by several hundred country solicitors, it is set forth:

" That the effect of the existing law which prohibits marriage within certain degrees of affinity, admits of serious doubts as applied to such marriages solemnized abroad; some of our most eminent civilians and lawyers being of opinion that it works a personal disqualification between the parties which nothing can remove—others considering that domicile in a foreign country, where such marriages are lawful, removes the disability—and

others, again, conceiving that the mere celebration of the marriage in such a country is sufficient.

" That your petitioners have reason to believe that numerous marriages of this kind, especially between widowers and their deceased wives' sisters, have been solemnized abroad since the passing of the act of 5th & 6th Will. 4, c. 54.

" That, in the opinion of your petitioners, such a state of the law is highly inexpedient; being calculated to create doubts as to the legitimacy of children, to promote litigation amongst the nearest relatives, and to place the titles to numerous estates upon an insecure footing."

The existence of the evil, and its extent, are therefore clearly proved; and no remedy has been or can be suggested but an Act to legalize such marriages. This, however, is opposed on two grounds: first, that they are contrary to religion; secondly, that they are contrary to sound policy.

The Levitical precepts form the basis of the religious objection, and it is assumed that these are binding on Christians, and that the degree of affinity in question is within them. It would be easy to shew by the authority of the best and most venerated writers on sacred subjects (including Jeremy Taylor), that they are not binding on Christians, any more than the other marriage laws or customs of the Jews, which

(according to Grotius) allowed polygamy. But there is no necessity for disputing the authority of these precepts, since they impliedly sanction the very marriage in dispute.

The whole question turns on the eighteenth verse:

"Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside the other *in her life time.*"—Leviticus, chap. xviii. ver. 18.

Upon this, Dr. Dodd's commentary is:

"Custom and practice are the best interpreters of law; and it appearing from these that polygamy was allowed amongst the Jews, as well as from Deut. xxi. 15, &c. xvii. 17, it is plain that the marginal interpretation (viz. one *wife to another*) cannot be true, *but that the marriage of two sisters at the same time is here prohibited;* and Grotius justly observes, that as the feuds and animosities of brothers are, of all others, the most keen; so are, generally, the jealousies and emulations between sisters. Therefore, the historian used the strong expression *to vex her:* but though a man might not marry two sisters *together,* it seems a natural conclusion, from the phrase *in her lifetime,* that he *might* marry the sister of his *deceased* wife: and thus, we learn from Selden, the Jews in general understood it."

Adam Clarke says:

"Thou shalt not marry two sisters at the same time, as Jacob did Rachael and Lea; but there is nothing in this law that rendered it illegal to marry a sister-in-law, when her sister was dead; therefore the text says, thou

shalt not take her in her lifetime to vex her, alluding probably to the case of the jealousies and vexations which subsisted between Lea and Rachael, and by which the family peace was so often disturbed."

The Septuagint, Vulgate, Syriac, Samaritan, Arabic and Chaldee paraphrases agree in this interpretation, which is adopted by Grotius, Montesquieu, Mr. Justice Story, and Chief Justice Vaughan. The last says:

"Within the meaning of Leviticus, and the constant practice of the commonwealth of the Jews, a man was prohibited not to marry his wife's sister only during her life, after he might; so the text is (citing it). This perhaps is a knot not easily untied, how the Levitical degrees are God's law in this kingdom, but not as they were in the commonwealth of Israel, where first given."

This is the only manner in which the precept can be reconciled with the precept in Deuteronomy (xxv. v. 5), where a marriage in the same degree of kindred is injoined as a duty:

"If brethren dwell together, and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger: her husband's brother shall go in unto her, and take her to him to wife, and perform the duty of an husband's brother unto her."

The Archbishop of Dublin pointedly observes:—"As for the allegations from the Levitical law, if any one brings them forward *in sincerity,* he should be prepared to advocate adherence to it in all points alike; among others,

the compulsory marriage of a brother with his deceased brother's widow."

The Apostles are silent on the point, but reference has been made to the practice and doctrine of the early Christians. Now, admitting that their inclination was to condemn such marriages, their inclination was certainly much stronger to prevent clergymen from marrying at all. They also considered any second marriage, or marriage with a widow, as communicating a taint. It is impossible, therefore, to adopt their practice or doctrine, without distinguishing what is reconcilable with the existing constitution of society from what is not; and the moment we come to distinguish, the force of the authority (as such) is at an end.

With regard to the individual opinions of the Fathers (who are far from unanimous), these must be viewed in connection with the ascetic nature of their lives, which led them to consider even connubial intercourse as inconsistent with perfect purity. Every fresh restriction on marriage was regarded as a gain to Christianity. It was by adroitly availing themselves of this feeling that the Popes contrived to enlarge the list of prohibited degrees to the extent mentioned by Lord Coke; who instances a case in which a marriage was declared null, and the children bastardized, on the ground of the husband's having stood godfather to the wife's cousin.

It seems to me therefore that the religious objection totally fails; and the legislature treated it as unfounded in 1835, when all marriages solemnized prior to the passing of Lord Lyndhurst's Act were deemed fit subjects of civil policy and virtually made good. It is also to be observed, that the Archbishop of Dublin and the Bishop of Llandaff (clara et venerabilia nomina) are among the supporters of the Bill for the alteration of the law; that six hundred of the clergy have petitioned in favour of it; and that it has been introduced into the House of Lords by Lord Wharncliffe, and into the House of Commons by Lord Francis Egerton; names which have already gone far towards silencing those who hoped to crush its supporters at the outset by the cry of irreligion and immorality.

But although it seems clear that a marriage with the sister of a deceased wife is nowhere prohibited in Scripture, the law will be found on inquiry to be based principally on the assumption that it is so prohibited. To show this, little more is necessary than to explain the manner in which the prohibition has obtained the sanction of the courts.

Prior to the Reformation, the degrees within which persons might marry were prescribed by the canon law; and the restrictions were

made as numerous as possible that the Romish church might extort a revenue by dispensing with them. At this period, a marriage with the sister of a deceased wife stood on the same footing as a marriage with a sixth or seventh cousin. Both were formally prohibited, and both actually took place. The cause of the change is well known. Henry the Eighth had married his brother's wife under a dispensation. He got tired of her, and applied to the Pope for a divorce on the ground of consanguinity, with the view of marrying Anne Boleyn.* The Pope refused, or granted it too late; the Reformation commenced, and Henry applied to one of his servile parliaments to release him from his ties. By 25 H. 8, c. 22, s. 3, a marriage with a brother's wife or a wife's sister is expressly declared to be within the prohibited degrees, all marriages between persons more remotely connected being legalized. This statute, however, is commonly regarded as superseded by the 32 Hen. 8, c. 38, which enacts in general terms, without any enumeration of degrees, "that all lawful persons may marry;" that "all persons shall be considered lawful that be not prohibited by

* "It seems, the marriage with his brother's wife
Has crept too near his conscience.
Suffolk.—No, his conscience
Has crept too near another lady."
Henry 8th, Act 2.

God's law;" and that "no reservation or prohibition, God's law except, shall trouble or impeach any marriage without the Levitical degrees." This act (though its meaning is far from clear) has been termed the Magna Charta of Matrimony, and was intended as a definitive settlement of the law; but there is a subsequent statute (1 Mary, sess. 2, c. 1,) by which Henry's marriage with Catherine is solemnly pronounced to have been from the beginning "a just, true, and holy union, in strict accordance with God's law and his holy word."*

It is obvious that these legislative declarations did not originate in moral or religious motives. They were political measures, having for their main objects the gratification of the sovereign's wishes and the settlement of the succession to the crown. In Mary's reign, it became necessary to sanction all marriages in the same degree of affinity as that of her mother, Catherine of Arragon. In Elizabeth's, it was thought necessary to discredit them in order to set up the marriage with Anne Boleyn; and the twist then given to opinion lasted for more than half a century--in fact, so long as the Protestant succession was at stake.

The table hung up in churches was prepared

* See an elaborate commentary on all the Acts, Vaughan's Rep. 323. They are very numerous, and it is extremely difficult to distinguish what is repealed from what is not.

by Archbishop Parker in his ecclesiastical capacity in 1563 (only five years after the Protestant Queen's accession), and has received no subsequent confirmation beyond what it may be supposed to derive from the canons of 1603, which are clearly not binding on the laity. Lord Hardwicke held distinctly that they possessed no binding authority as laws, * and Mr. Hallam says of them: "a code of new canons had recently been established in convocation, with the king's assent, obligatory perhaps upon the clergy, but tending to set up an unwarrantable authority over the whole nation."

Now, the leading case in which the temporal courts have declared a marriage with a deceased wife's sister to be void, is Hill v. Good,† decided by the Common Pleas in 1673. Lord Chief Justice Vaughan delivered the judgment of the court, and that judgment will be found to depend almost exclusively upon the assumed authority of these very canons. But in The Queen v. O'Connell, it was held (particularly by Lord Denman,) that almost any course of practice, or current of authorities, might be disregarded, if proved to have originated in mistake. It is quite clear that the doctrine in dispute originated in a mistake,—whether in the erro-

* *Middleton* v. *Croft*, 2 Atkin's Rep. App.

† Vaugh. Rep.

neous interpretation put upon a text of scripture or in the undue authority attributed to a set of canons, matters little,—at all events, in a mistake. If, therefore, it chanced to be brought under the consideration of Lord Denman and his brother judges, there is no saying to what conclusion they might come, and a good deal of embarrassing discussion would be inevitable. Let any pious person consider the consequences of discussing the authority and meaning of scriptural texts, on such a subject as marriage, before a court of common law.

The uncertain state of the law, therefore, forms in itself a strong argument for a declaratory Act. The state of the law in foreign countries is also most important; as proving both the sense put upon the alleged scriptural authority by other Christian communities, and the almost universal tendency to contract the marriages in question.

A man may marry the sister of a deceased wife, either as a matter of course or upon a formal application to the authorities, throughout the whole of Prussia (including the Rhenish provinces), Saxony, Hanover, Baden, Mecklenburgh, Hamburgh, Denmark, and most of the other Protestant States of Europe.

An unanswerable testimony regarding the frequency and beneficial results of such mar-

riages in the United States, has been given by Mr. Justice Story, the best possible authority: "Nothing is more common in almost all the states of America than second marriages of this sort; and so far from being doubtful as to their moral tendency, they are among us deemed the very best sort of marriages. In my whole life I never heard the slightest suggestion against them founded on moral or domestic considerations."*

In most Catholic countries they are formally prohibited, but dispensations are easily obtained, and no real difficulty is thrown in the way of persons desirous of contracting them. In France, they are of constant occurrence. The licence is granted by the Minister of Justice, who merely requires to be assured that no improper intercourse has taken place between the parties.

So far, therefore, everything is against the restrictive law or doctrine; and powerful indeed should be the reasons for maintaining it. But the only objection that still influences candid minds, is one that falls to the ground the moment we subject it to analysis.

* Letter to Mr. Edwin Field, read by Lord Wharncliffe in the course of his speech. Testimony equally strong and to the same effect regarding other countries, particularly France and Germany, has been supplied to me; but I do not feel at liberty to quote the names of my correspondents.

The proposed change, it is said, would alter the domestic relations, and diminish the comforts, of the parties principally concerned. The husband would no longer be regarded as a safe *chaperon* (this is the favourite word) for his sister-in-law; and no sister-in-law could live with a widower without reproach, unless she became his wife.

The fear of such a consequence (admitting it to be at all probable) would be an insufficient reason for refusing to legislate in the present instance, unless the lower class is to be entirely laid out of the question. The poor know nothing of *chaperons:* they are obliged to get who they can to take care of their families; and *their* domestic arrangements could not be disadvantageously affected by the change. But it is unnecessary to press this topic, because the objection proceeds altogether upon a mistake.

There are only two principles upon which the kind of intimacy in question between persons of different sexes, is sanctioned by the habits of society.

1. On the ground that sexual passion is completely excluded.

2. From reliance on age and character, or from a belief that men will not inflict a gross wrong on those dear to them, or be guilty of crime

under circumstances which would call down a more than ordinary degree of reprobation on their heads. Thus, elderly clergymen, first cousins,* and still more distant connections, enjoy considerable immunities; and close observers will admit that fair allowances are made for cases of peculiar position or necessity. A very slight degree of relationship would be thought to justify a steady woman of straitened means in accepting the hospitality of a widower with children.

There is no prohibition to marry affecting any of the cases within the second principle, and the case in question obviously depends upon that. It cannot depend on the first principle, because every one knows that sensual passion is not excluded; and it would be strange if it were. There is neither blood-relationship nor early habit to exclude it: up to the period when the husband makes his selection, he necessarily regards all the sisters alike; and it is preposterous to expect that a complete revulsion in his moral being is to take place then.

At all events, there is one unanswerable proof that the social sanction, supposed to be

* It is remarkable that marriages between first cousins were formerly resisted on precisely similar grounds. See Jeremy Taylor's *Duct. Dub.* B. 2.

in danger, does not depend upon the legal prohibition. If it did, the rule would be co-extensive with the prohibition. Now, although brothers-and-sisters-in-law will occasionally be found living together in great intimacy, perfect innocence, and without reproach, still this permitted intimacy varies according to age, character, position, and a host of circumstances too minute to specify. By way of illustration, it is simply necessary to compare the case of a gay man in the prime of life living with a coquettish beauty, and that of a staid middle-aged widower living with a plain, dowdy, respectable old maid. Yet the legal prohibition exists in both cases.

Laws framed on the *sic volo, sic jubeo* principle, especially when relating to morals, have proved nugatory or mischievous in all ages. The Bishop of London, however, conceives that it is simply necessary for a legislature to issue its decrees:

> "When the fact is once known, that it is impossible to contract a marriage with a certain person, say a wife's sister, why should there be any more difficulty in a man's shaping his inclinations, affections, wishes and thoughts in such a line, as to shut out from his contemplation all idea of marriage with that person, *any more than with his own sister by blood?* I see none."

Others see a great deal; or why have so many enlightened Christian communities, after

prohibiting such marriages, come round to the conviction, that it is best to sanction them? Why are they constantly taking place in England in defiance of the law? or why are so many persons desirous of contracting them? In the case of a sister by blood, the feeling has commenced in infancy, grown with our growth, and strengthened with our strength. In the case of a wife's sister, we receive no assistance from habit; on the contrary, the acquaintance may have commenced with the very inclination we are expected to suppress. The difference is so radical, that, if all the nations in the world were to co-operate for the purpose, they could not put the two cases on a par, they could not make men regard their wives' sisters as their own; and the strictest law made by a single state, in opposition to the general feeling, would have no moral influence at all.

In Curran's celebrated speech against the late Marquis of Headfort, he supposes a warning voice thus addressing the noble defendant prior to the completion of the crime: "Pause, my lord, while there is yet a moment for reflection. What are your motives, what your views, what your prospects,—from what you are about to do? You are a married man, the husband of the most amiable and respectable of women; you cannot look to the chance of marrying this wretched

fugitive: between you and such an event there are *two sepulchres* to pass."

The barrier was practically as strong as any that can be constructed by the law, but it was not found strong enough to exclude the guilty wish.

The Bishop of London is the most formidable opponent of the bill, and I hope therefore I shall not be accused of presumption if I venture to scrutinize another passage of his speech:

"Now, my Lords, with regard to the question of expediency. I look at the state of society in this country, and I see reason to think, that the prohibition which prevents the intermarriage of persons within certain near degrees of affinity, is the very safe-guard of our domestic relations. Whatever advantages, my Lords, might result from its removal, in my opinion, they would be more than counterbalanced by the evils that would flow from that measure. There are cases, my Lords, I admit, where a widower is desirous of marrying the sister of his deceased wife, because he thinks that he has thereby a fairer chance of obtaining for his orphan children a kind mother, and a faithful protectress, than if he were to introduce under his roof a strange stepmother; but there are many more cases, *in the proportion of fifty to one*, where the husband would be desirous of having the benefit of the same maternal care over his orphan children shown them by the sister of his deceased wife, without any intention of marrying her; where perhaps his affections so linger about the grave of his deceased partner as shut out altogether from his

mind thoughts of future marriage; where he would be grateful to have bestowed on his children the tender care of his deceased wife's sister, an advantage from which they would be utterly precluded, if it was known that it was possible for him to marry that sister. For, my Lords, the state of society in this country is such, that it is held impossible for a man and a woman, not past a certain age, to live together with respectability and propriety without marriage, if they are persons not prevented by any legal impediment from contracting it. My Lords, I hold that this is a distinction between ourselves and some nations of the continent very much in our favour; and most sorry should I be to see the day when that distinction should be removed. My Lords, a deceased wife's sister may now with propriety undertake the care of her orphan nephews and nieces, because she can never stand to their father in any nearer relation. If the prohibitions were removed, it would be impossible for the husband to invite her to come and live under his roof, unless he held out an offer of marriage. The instances where the deceased wife's sister now fills that situation are so many, compared with those where the husband would be desirous of marrying her, that I think a great deal more will be lost on the one hand by permitting such marriages, than you could by possibility gain on the other."

The whole force of this argument rests on the assumption, that the widowed husband may *in all cases* receive the sister under his roof, and that the legal impediment is the cause. But, the widowed husband may not in all cases re-

ceive the sister, and it will hardly be contended, that two persons of opposite sexes may live together simply because a legal impediment exists. To justify them in doing so, the impediment must be of such a nature as to exclude, not only all hope of marriage, but all tendency to sexual inclination; and this, in the case before us, the legal impediment has proved utterly unable to effect. The experiment has been fairly tried on the largest possible scale, and it has failed at all times and in all countries.

If, therefore, persons so related by affinity have (as the Bishop of London takes for granted) been in the habit of living together, in full reliance on the power of the legal impediment to exclude unholy wishes, and if (as the Bishop of London also takes for granted) it be, generally speaking, injurious to morality for persons of opposite sexes to live together without marrying, the sooner persons so related give up the habit, the better; for assuredly they are leaning on a reed. Those among them who are anxiously calling for the interposition of the legislature, have evidently become aware of their danger, for they say in effect, "We dare not live together, as the Bishop of London says we may." They may be mistaken, but they are at all events entitled to

respect and sympathy. Were they to adopt a different line of conduct, his Lordship might have a great deal to answer for.

His Lordship says, that the cases are as fifty to one, where the husband would wish to have the benefit of the sister-in-law's maternal care for his children without marrying her. If this be so, how happens it that so many (thousands, according to Lord Wharncliffe) have married, and so many are anxious to marry, their sisters-in-law? In point of fact, the assertion is most unjust to the male sex. Men are selfish enough in all conscience, but surely so large a proportion would not desire or encourage such a sacrifice; and few young women, supposing them willing, would be permitted by their parents to devote the best years of their life to such an object. Setting all considerations of morality apart, the only mode by which, in the majority of cases, a widower can permanently secure the maternal care of a marriageable sister-in-law for his children, is by marrying her. The value of this care is admitted on all hands, and it is therefore unnecessary to dwell upon it.*

To guard myself effectually against the charge of presumption, it may be as well to quote the

* See Montesquieu (Book xxvi. c. 14), where such marriages are strongly recommended.

Archbishop of Dublin's remark on this argument:

"The only objection which at the first glance appears to have any plausibility, would be perceived, I think, on a very little reflection, to be extremely feeble, namely, the supposed advantage (under the prohibition of such marriages) of a widower's being enabled without scandal to reside with his deceased wife's sister.

"In fact, nothing more effectually guards against any such scandal than its being known, that, if any one were so disposed, they were at liberty to marry.

"But as for any *abhorrence* of cohabitation between them, as *monstrous* and *unnatural*, being created by a law prohibiting their marriage, no idea can be more absurd. The law does not permit a woman to marry during her husband's lifetime; yet this does not obviate the scandal that would arise from the unrestrained familiar intercourse of a married woman with another man."

The worst of the apprehended evil then appears, on analysis, to be this—that, if the prohibition were removed, certain persons who (from age, habits, character, or conduct) might be expected to marry, but who are now living together without marrying, and had rather continue to do so, would be obliged to marry or to part. This is an evil of so doubtful a character, that it might be mistaken for a good.

Against it must be set—the spurious origin of the restrictive law: its doubtful authority: the

parliamentary pledge to reconsider it: its want of harmony with the laws of other countries, as well as with the habits and feelings of society in our own: the consequent impossibility of enforcing it: its demoralizing effect on the lower class: the litigation it must entail on the higher: and the misery it is hourly occasioning to thousands of almost every rank in life.

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A LETTER

TO THE RIGHT REVEREND

THE LORD BISHOP OF LONDON,

ON THE

Law of Marriage

WITHIN THE PROHIBITED DEGREES OF AFFINITY:

WITH

HIS LORDSHIP'S SPEECH

ON THE PRESENTATION OF PETITIONS TO THE HOUSE OF LORDS BY LORD WHARNCLIFFE,

Praying an Amendment in the Act *of the* 5th *and* 6th Wm. IV. c. 54;

AND

A Letter from

THE LATE SIR WILLIAM JONES,

Respecting the Prohibitions contained in the Eighteenth Chapter of Leviticus.

By H. R. REYNOLDS, Jun. M.A.

Barrister at Law.

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A LETTER

TO

THE LORD BISHOP OF LONDON.

MY LORD,

THE question debated in the House of Lords, during the last Session of the late Parliament,—on the presentation of petitions, by Lord Wharncliffe, praying for a reconsideration of the present Law of Marriage, within some of the Prohibited Degrees of Affinity,—involved principles of the deepest national interest, and has excited an unusual degree of the public attention. The sudden dissolution of Parliament has stopped the progress of a Bill subsequently introduced by his Lordship, for the purpose of carrying the suggestions of the petitioners into a law: but, although the subject of their appeal to the House of Peers, has been thus suspended for a while, it must, undoubtedly, be soon revived, and be again submitted, at no distant period, to the earnest consideration of the

Legislature and the country. The weight which must ever attach to your Lordship's opinion upon any question of general interest, and especially, upon any question involving solemn points of morality and religion, has made the part which you took upon the debate on Lord Wharncliffe's petitions, a subject of the deepest moment: and I have thought that I could not, in any more appropriate manner, invite the public attention to the calm consideration of the question at issue, than by venturing to submit to your Lordship some few observations, upon the speech you then delivered.

I shall very much regret, if, in the freedom which is necessary for right discussion, I shall appear in the least deficient in the sincere respect I entertain for your Lordship's high station, your great learning, and eminent abilities. As a controversialist, I should never venture to approach your Lordship. I know your great superiority to myself, as a scholar, a reasoner, and a divine, too well, to expect any thing from such a contest, but disgraceful defeat. I cannot, however, consider your Lordship as the determined opponent of the petitioners. The sentiments which you delivered in the House of Peers, by no means pledged your Lordship to oppose *all* alteration in the laws regarding marriage, between persons related by *Affinity;* you did not object to the reception of the petitions; you abstained,

(as I read your Lordship's speech,) from expressing your own decided opinion upon the subject; you chiefly spoke of what you had reason to believe to be the feeling of a majority of the *Clergy* upon it; you merely called upon the great Conservative Assembly you were addressing, to reflect, "to pause," before consenting to abolish, what, all admit, to have been a very ancient law, both of this country, and of the Church. Your Lordship has not yet been called upon to give your final judgment upon this momentous question. I am sure that you are prepared to apply to it, again and again, your matured and most earnest thoughts: and I trust that your Lordship will not think me presumptuous, if I venture to express my respectful hopes, that, when the season shall arrive for pronouncing your ultimate decision upon a subject involving so vast a portion of the happiness and morality of your country, that decision may be in favour of the petitioners, and your clear intellect and powerful influence may be exerted in their behalf.

Without further preface or apology, I shall now proceed to the consideration of your Lordship's speech. And here, my Lord, with that freedom, which I have ventured to claim for myself, in the course of my discussion, I cannot disguise from your Lordship, that the observations, with which you prefaced your remarks,

are calculated to detract from the *real* weight which belongs to some of the petitions, upon which you were commenting. My Lord, many of these petitions were signed by solicitors. I am informed that the names of nearly five hundred gentlemen, in this department of the legal profession, are attached to these petitions. Among them, are the names of many of the most extensive practice, and of the most unsullied reputation. They include, not only a large number of gentlemen practising in the different provincial towns, but eighty of the leading *firms* of the metropolis; gentlemen, whose clients are composed of the first nobility, clergy, and commonalty of the realm. With regard to the petitions signed by these gentlemen, your Lordship observed "that there were persons who had contracted illegal marriages, of the description to which the petitions referred, or who were placed in circumstances, which made them desirous of contracting them;—that they had determined to make a united effort to procure a repeal of the laws, to which those petitions related;—that they had employed solicitors to collect evidence, or to procure petitions; — that *those solicitors had also signed them;* and that the result was, the roll of petitions laid before the house:"—and, (in reference to this statement,) your Lordship remarked, "*That it somewhat lessened the weight to be attached to those petitions.*"

Undoubtedly, my Lord, *if* these solicitors had been employed by interested parties, to procure signatures to petitions; *if* they had either been employed themselves to sign them, or had signed them with a view to gratify their clients, or to swell the number of petitioners, in favour of those clients' wishes, they would be interested parties: their petitions would be rightly considered as not speaking their genuine sentiments, and the weight of them would—not only be lessened—but become as a feather in the balance of impartial judgment.

But, is this the case, my Lord? Are these professional gentlemen, who have signed the petitions in question, rightly to be considered as interested parties, speaking only their clients' sentiments, and signing those petitions for their employers' sake alone? My Lord, I am informed, that all those persons who have contracted, or are desirous of contracting the marriages to which your Lordship has adverted, have employed but two solicitors,—the partners of *a single firm*, in London,—for the purpose of promoting, by legal and constitutional means, the object they have very deeply at heart.

My Lord, these persons have been *obliged* to employ solicitors; for gentlemen conversant with legal proceedings, are alone capable of properly advising them, both as to the actual state of the law, and as to the mode of legally procuring the

revision of any part of it. But of all the solicitors who have signed the petitions presented by Lord Wharncliffe, I am informed that the one firm I have mentioned have alone been employed by interested parties to procure those petitions to which your Lordship has referred. These petitioners, then, disclaiming all interested motives, which would justly lessen the weight to be attached to their signatures, would tell your Lordship *why* they signed the petitions in question.

Your Lordship is aware*, that there is a principle of International Law, arising out of the comity which unites one christian community with another, by which, (as a general rule,) a marriage, valid according to the laws of the particular state in which it is celebrated, is also good and valid in every other Christian country.

Mr. Justice Story, upon whom your Lordship has passed so high and just an eulogium, observes, upon this subject; "†That prohibitions of marriage have been extended in England so as to comprise the case of Marriage between a man and the sister of his deceased wife; but upon what ground of Scripture authority, it has been thought very difficult to affirm. In many, and, indeed, in most of the American States, a different rule prevails, and marriages between a man and the

* See Story's Conflict of Laws, 2d edit. (1841), p. 97, and the cases there collected. † Ibid. p. 180.

sister of his former deceased wife, are not only deemed in a civil sense lawful, but are deemed, in a moral, religious, and Christian sense, lawful, and exceedingly praiseworthy." He then continues thus:—"It would be a strong point, to put, that a marriage perfectly valid between a man and the sister of a former deceased wife, in New England, shall be held invalid in Virginia, or England, even though the parties originally belong to, or were born in, the latter country or state. But as to persons not so born or belonging, it would be of the *most dangerous consequence* to suppose, that the country of either of them would assume the liberty to hold such marriages as a nullity, merely because their own jurisprudence would not, in a local celebration of marriage therein, uphold it." After quoting, with approbation, the decision of one of the most learned American Courts, "that a marriage celebrated between a man and his wife's sister, in that particular state, (where such a marriage is allowable) would be held valid in every other state, and the parties entitled to the benefit of the matrimonial contract," this learned Professor of International Law, (perhaps the first living authority upon the subject) thus proceeds:—"Indeed, in the diversity of religious opinions in Christian countries, a large space must be allowed for interpretation, as to religious duties, rights, and solemnities. In the Catholic countries of

Continental Europe, there are many prohibitions of marriage which are connected with religious *Canons* and establishments; and in most countries there are some positive customary prohibitions, which involve peculiarities of religious opinion, or of conscientious doubt. It would be most inconvenient to hold all marriages celebrated elsewhere void, which are not in scrupulous accordance with the local institution of a particular country."

Such, then, my Lord, appears to be the *general* rule in regard to marriages celebrated abroad.

But then the Act of 5 and 6 Wm. IV. c. 54, is supposed, by some of our Lawyers, to have imposed a *personal disqualification* on any British subject, to contract a marriage prohibited by that Act, even in any country where such a marriage would be good. I say, that this interpretation of the Act of King William has been adopted by *certain* of our English Lawyers; but, my Lord, I believe that there has, as yet, been no judicial decision upon the subject, and it is one, on which there is by no means an unanimous opinion in the legal profession*. Many practitioners of the greatest eminence, both in the Ecclesiastical Courts, and those of Chancery, and the Common Law, conceive, that the Act in question, has effected no change whatever in the law regarding marriages celebrated abroad. But,

* See Mr. Burge's Comm. on Col. and For. Laws, Part 1. ch. v. § 3.

even if the Act should impose a disqualification upon British subjects, to contract such a marriage in any country where it may be allowed, it is, I understand, the general opinion of the learned profession, that when a British subject has abandoned his country, and established for himself a domicile in a foreign state, he has acquired all the privileges of a foreign subject, and that any valid marriage he may contract abroad, will also be valid *here*. But then arises the question, what constitutes an abandonment of the parent country, and the adoption of a domicile in a foreign state? This is a question of evidence. It depends upon the conduct of the parties, and the circumstances of their residence in the foreign state. It is a question of intention. A subject, of a very equivocal nature, full of difficulty and uncertainty*. Of the extent of this difficulty and this uncertainty, persons connected with that department of the law, to which the petitioners in question belong, are the best judges:—for it is to them, that all persons of any property which is to become the subject of marriage settlement, necessarily apply, when desirous of contracting marriage:—and those who have no property to settle, would also apply to them, if about to form such a connection, of which the legality might be doubtful. These gentlemen, therefore, have the greatest experience on this subject, both as to the

* See Story's Conf. Laws, ch. iii.

nature of the legal difficulties which it presents, and the number of persons affected by them.

A Solicitor, of great practice and extensive observation, has lately written a pamphlet on this subject, (of the ability of which, I understand that those best capable of forming a just opinion have spoken highly), in which he makes the following statement. I quote it as the opinion of a competent person upon a matter of fact.

"Marriages," says the author of a pamphlet entitled 'The present State of the Law as to Marriages Abroad, between English Subjects within the prohibited Degrees of Affinity,' written in the year 1840, "between connections by affinity of the nearest kind, are of every-day occurrence. The marriage of a sister of a deceased wife has not been stopped by the late Act, and, we believe, cannot be stopped even among the higher classes. Among the middle they are daily taking place. Among the lower they have long been the commonest marriage which a widower with children makes, and the late Act has made no difference to the custom. The question as to the legality of these marriages is well known, in the lower classes, and affords a ready and often-used pretext for discarding a wife of whom the husband has grown weary."

In another place he observes :—

"Most professional readers of experience will probably be well aware that, since the late Act,

very many of these marriages have taken place, and are taking place, abroad. Many, like ourselves, very probably, have been more than once consulted on the subject, and our wish and object is, that the law should be made *clear* for the future, and that if these marriages are to be prohibited, it should be put beyond *question*, that between British subjects they are bad wherever they take place."

The learned gentleman adds, in a note to the above passage—

"We have been much surprised to find how little the parties have been affected by the intimation that their marriages will be questionable. About ten or twelve cases have come to our knowledge since the last Act, and in every one we believe the marriage has been solemnized. In none, as far as we have known, has it been any thing but a quiet and deliberate engagement between the parties. In most there has been a young family to be taken care of. Most of the parties have been in the upper ranks of the middle classes."

This, my Lord, is the statement of one among the many Metropolitan Solicitors, who have signed one of the Petitions noticed by your Lordship. But this gentleman, my Lord, was not, as I am informed, *employed* by interested parties, either to procure Petitions, or to collect evi-

dence on their behalf. He must therefore have signed that Petition from a conviction of the *duty* which was imposed upon the legislature, to give their serious attention to the subject comprised in it. And this, my Lord, I have no doubt, must have been the feeling which actuated, at least, the majority of those gentlemen who affixed their names to the Petition of the Solicitors. Nor is it, indeed, surprising that they should have readily done so. For, if there is one evil more than another which requires the interference of the Legislature, it is, when the state of the law is such, that the titles to property are placed in constant jeopardy; when men may be bastardized, and they, and their descendants, deprived of their estates, years after they have enjoyed them, and made them the subject of family settlements, and pecuniary liabilities; when men may be compelled to live in constant fear of beggary; and a stranger may, by law, be enabled to deprive them of that, which they have, from infancy, been taught to regard as their own inheritance. And this, my Lord, from no fault of theirs: and no very *heavy* fault of their ancestors. My Lord, I am not pleading the cause of sin: nor contending, that the man who violates the laws of God, or of his country, should be permitted to evade the just penalty of his conduct. But here is a case, where the supposed marriage is *allowed*, not only, (subject to dispen-

sation) "in most of the Roman Catholic countries of Europe, but in most of the States in America*, through the whole of Prussia, including the Rhenish Provinces, Saxony, Hanover, Baden, Mecklenburgh, Hamburgh, Denmark, and most of the other Protestant States of Europe," comprising, my Lord, nearly the whole of Christendom. And, I will suppose, that the parties who have contracted it, have resided abroad, intending to adopt a foreign settlement, but not having complied with all the requisitions considered necessary, by an English tribunal, to constitute a change of domicile:—These parties die; and their children return to England, hoping to reside upon and enjoy their (so thought) paternal estates; and a suit is instituted by the heir-at-law of some distant ancestor—to eject them from their patrimony—on the plea, that their parents' marriage was illegal, and themselves illegitimate:—and the suit succeeds;—and these parties are made at once illegitimate, and beggars! My Lord, this is no far-fetched case: it is one which may occur in any one of those instances which are mentioned above. And if the condition of parties, who, before the passing of the Act of King William, had married in this country within the prohibited degrees of affinity, in defiance of the known ecclesiastical

* "Summary of Objections to the Doctrine, that a Marriage with a deceased Wife's Sister is contrary to Law, Religion, or Morality." (1839.)

law of the land, were entitled to relief from the Legislature; then, my Lord, surely, those persons who have married under the circumstances I have mentioned, in a foreign, Protestant country, which they had intended to have made their own permanent homes, are entitled to a similar protection! Indeed, my Lord, this state of the law is a great practical evil. It presents the most glaring anomalies. A woman of virtue,—(I will not put forward, as to her, the lower considerations of birth and wealth)—a woman of virtue, may be an honoured wife in Protestant Hanover, and here, an incestuous concubine!—Her children may be the first Princes of a great European Kingdom, deducing their titles from the proudest names of feudal greatness; but, in England,—Bastards,—and the Sons of No One!! The Estates which have descended on them from the remotest periods of our annals,—may be made the property of some remote and forgotten scion of the parent stock, or may be seized upon by the Crown! These *facts*, my Lord, were brought continually before the notice of a large and intelligent portion of the public in the course of their professional duties; and the Solicitors who signed those Petitions felt it their *duty* to bring these facts before the notice of that House of Parliament, of which your Lordship is so distinguished a Member; and they accordingly presented the petitions in question;—one of which points out,

so clearly, and shortly, the evils of which they had to complain, that I shall take the liberty of quoting its language to your Lordship.

The Petition of the London Solicitors states, "That the effect of the existing law, which prohibits marriage within certain degrees of affinity, admits of serious doubts as applied to such marriages solemnized abroad; some of our most eminent civilians and lawyers being of opinion, that it works a personal disqualification between the parties, which nothing can remove; others considering, that domicile in a foreign country, where such marriages are lawful, removes the disability; and others, again, conceiving, that the mere celebration of the marriage in such a country is sufficient.

"That the petitioners have reason to believe, that numerous marriages of this kind, especially between Widowers and their deceased Wives' Sisters, have been solemnized abroad since the passing of the Act, 5th and 6th William IV. c. 54.

"That, in the opinion of the petitioners, such a state of the law is highly inexpedient, being calculated to create doubts as to the legitimacy of children—to promote litigation amongst the nearest relatives—and to place the titles to numerous estates upon an insecure footing.

"And they therefore prayed, that their Lordships would take the subject into their early consideration, and adopt such measures for the ame-

lioration of the law in that particular as to their Lordships might seem meet."

Your Lordship will perceive, that these gentlemen do not presume to point out to the House of Lords the particular remedies, which it may be expedient to apply to the evils of which they inform their Lordships. These they leave to the wisdom of their Lordships' House—composed, as it is, of the first legislators, divines, and lawyers. They merely speak of facts which they themselves know: and surely, my Lord, a petition, so worded, and so signed, is deserving of the grave consideration of Parliament?

The remedy I should venture to propose would be, a calm, honest, and fearless examination of the existing law regarding the prohibited Degrees of Affinity: an express Legislative allowance of such of them as are not forbidden by the clearly revealed will of God, or the plainest rules of social expediency: and a declaration, (such as that contained in Lord Wharncliffe's bill,) that all marriages *not* included in such allowance, shall, thenceforth, be utterly null and void, to all intents and purposes whatsoever, between persons born British subjects, whether celebrated within the United Kingdom and its Dependencies, or elsewhere, and whether they have, or have not, obtained any foreign domicile: and that the children of all such marriages shall be illegitimate, and

incapable of inheriting any kind of property whatever, within the United Kingdom and its Dependencies.

Your Lordship finishes your remarks upon the petition of the Solicitors, by observing, "That however competent judges these gentlemen may be of the effect produced by the law, to which their petition referred, upon matters relating to *property*, they were not so well qualified to judge of its *religious* bearings as the Clergy."

My Lord, it is an observation of Sir Matthew Hale, as sound a divine as he was an eminent lawyer, that there are two things which every man, to the best of his abilities, is bound to understand—his Profession, and his Religion. Upon the religious bearings of this question, these gentlemen have not presumed to offer an opinion;—although that part of the subject may not be considered as altogether alien from the province of Christian laymen. They would probably admit, with your Lordship, that they are not so well qualified to judge of these matters, as the Clergy. But, my Lord, several of the Clergy have signed these petitions. And, upon this, your Lordship observes, "that these Clergymen, after all, are not more than about 300, out of a body of 15,000. *Therefore*, it cannot be urged that the Clergy in general, or any thing like a majority of them, are in favour of the abolition of these laws." The

number of Clergymen who signed these petitions, are, I believe, about 400; but this circumstance does not, I admit, alter the force of your Lordship's argument. If it be a right conclusion, (as from your Lordship's remark, and especially from your contrasting the Clergy with the Solicitors as competent judges of a religious question, you would seem to think,) if it be rightly concluded, that of the 15,000 educated men, who form the Clergy of England, not more than from 300 to 400 are in favour of the change proposed by the petitioners, and that the remainder are *adverse to that change;* I should, indeed, consider this fact as a most powerful objection to the prayer of the petitioners. I should most seriously lament it: for, conscientiously believing, that the interest and happiness of the country require some revision of the Marriage Laws, in regard to affinity, I should feel that there was a most serious and formidable obstacle to be overcome, in the scruples of a large body of men, for whom I entertain the most sincere veneration. But, my Lord, can it be soundly maintained, from the number of clerical signatures to these petitions, "that the great body of those who minister in the Temples of God, in this country," are opposed to those of their brethren who have signed them? May it not be true, my Lord, that a large proportion of the Clergy have never heard of these petitions, or have never been requested to sign them? That

many may be unwilling to commit themselves to a measure, respecting which, they do not know what may be the opinion of their Diocesans, or other Ecclesiastical superiors? That many of them may be quiet, retiring, secluded men, devoted to their pastoral duties, in remote villages, and unwilling to bring their humble names before the public? Besides, my Lord, how many of the Clergy can be assumed to have fully examined the various difficult and important questions, which this subject involves; questions partaking of a legal, as well as of a religious, and moral nature; requiring considerable study of the laws and customs of the ancient Jews; in a great degree, questions of fact;—questions, requiring abundant opportunities of reading and observation, together with much reflection, in order to arrive at a just conclusion upon them. Perhaps, too, those cases of immorality and domestic distress to which many of these 400 Clergymen bear witness, as arising out of the present state of the law, may not have come under the notice of some of their brethren, the Pastors of retired villages, who have been unwilling to petition Parliament on the subject. Add to this, my Lord, that the Clergy, as a body, are properly and wisely averse to change; especially to any change in the laws and constitutions of their Church; that they are suspicious and fearful of those who propose it; that the duty of establishing

outward fences, around what they have been taught to think peculiarly sacred, (and what more sacred than marriage?), is a revered and ancient doctrine of their Church;—and it would be no great matter of surprise, perhaps, if it were true, that, with their present information on the subject, the majority of the Clergy should be opposed to any change whatever in the Laws of Marriage.

My Lord, when I consider the original institution of Marriage, by the Creator, in Paradise; the solemn and mysterious words by which that institution was accompanied; the application of these words, by our Blessed Saviour, to the Jewish doctrine of Divorce; the quotation of the same words by St. Paul, in his divine exhortation to conjugal unity and love; the mystical type which he attributes to Marriage, of the Union between Christ and his Church; the adoption of this doctrine into the beautiful formularies of our Reformed Religion; the grave and solemn notions of the early Christians on this subject; together with the awful obligations which man and woman, in matrimony, contract towards each other,—I cannot be surprised, if the great body of the Clergy, in general, should regard any approach to change in the law of so holy an institution, with those feelings, which Burke so well describes, when he says, "that we ought to examine the disorders of the state, as we would the wounds of a father, with pious awe

and trembling solicitude." This, my Lord, is a natural and praiseworthy feeling in these estimable men. But it is no argument, I submit, that when the evils of the present system are pointed out to them, and remedies proposed by real friends of the Church;—yes, indeed, my Lord, by real friends of the Church;—they should, still, and ever, be opposed to those remedies.

My Lord, I may conclude my observations on this part of the subject, by quoting the statement of a Clergyman, professing to give the opinion of his brethren, as well as his own, on the subject of these petitions*:—

"The subject of Marriage," says a rector of a populous parish in the country, "as the law now stands, can scarcely be stated in any rank of society, but its effects are forced on our notice, and a desire manifested, that a change should be advocated, on sound and rational principles. Ever since the late enactments, marriages (within the prohibited degrees of collateral affinity,) have nevertheless been contracted in the middling and upper classes of society, and the religious sanction to such marriages has been obtained in Holland and Germany, and such unions have received the countenance of society. Among the poorer people, parties live together unsanctioned by the

* Considerations on the State of the Law regarding Marriage with a deceased Wife's Sister. By H. R. Reynolds, M.A. Barrister-at-Law. (1840.) 4th Edition, p. 65.

Church, and complain loudly, that an unjust law,—a law unsanctioned by the Bible, and the Christian's rule of life and conduct,—deprives them of the title of husband, and bastardizes their children. We dare affirm, that there is scarcely a clergyman, resident in a populous parish, but can testify to the injurious operation of the law as it now stands, and would (whatever may be his private opinion) gladly witness its repeal, and the substitution of one, more scriptural and rational, in its stead."

If this statement be correct, it is of great importance, as speaking the sentiments of such of the Clergy as have had opportunities of judging of a very material part of the question now under discussion. But your Lordship has truly observed, "that neither the opinion of the Solicitors, nor of the Clergy, affects the *merits* of the case itself."

To the examination, then, of the *merits* of the case, I shall now proceed to follow your Lordship:—

Your Lordship commences your observations, upon this part of the subject, by passing a slight rebuke upon the Noble Lord who had presented the petitions referred to, for having asserted, "that the prohibitions in question were contained in the Canon Law of the Roman Church." Your Lordship takes occasion to inform the House, "that the prohibitions were of a much earlier date than the Canon Law; (meaning by that

term, 'the Decretals, and other laws, compiled by Gratian;')" and you gave their lordships to understand, "that marriage with a deceased wife's sister was, at least, condemned, by implication, in the Apostolic Canons, and forbidden by the Council of Eliberis, early in the fourth century." The conclusion to which your Lordship arrived, upon this statement, is this:—"That the Church does not stand up for these prohibitions" (that is, the prohibitions generally, which were the subject of debate), "as prohibitions merely adopted by our Church from that of Rome; that they were laws, which had been in force, in the Christian Church, *almost since the time of the Apostles;*" and that, *therefore*, their lordships ought "to pause before they conceded so important a point as to repeal them."

My Lord, I can assure you, that it is with the sincerest respect, that I venture to express my regret, that in the brevity, inseparable, probably, from the object your Lordship had in view, at that time, when addressing the House of Lords, you should have used expressions, calculated, perhaps, to produce a somewhat inaccurate impression, upon an assembly comparatively ignorant of the subject under debate. My Lord, I do not read Lord Wharncliffe's speech, as representing to the House, that the Prohibitions, the repeal of which he was advocating, had never been known in the Christian Church, before the

compilation of the Canon Law by Gratian, in the year 1151. His lordship was adverting to what had been the law in this country before the time of Henry the Eighth. This was, undoubtedly, in part at least, the old Canon Law of Roman Europe, which law was *compiled* by Gratian, in the year 1151, but had been in operation long before; and it was with a view to point out how that Canon Law had been evaded, and the intolerable abuses which had been created by the facilities of obtaining dispensations*, that his Lordship had adverted to that part of his subject. It was introductory to his comment on the Statutes of Henry the Eighth, and the construction, and binding authority, of the Levitical Code.

But your Lordship's statement seems rather calculated to lead to the impression, that *all* the prohibited degrees, which formed the subject of debate, were equally proscribed by the Church—to the laity, as well as to the clergy,—and that, "almost from the Apostolic times." At least, such, I think, must have been the conclusion adopted

* "It was not until the Twelfth century that any established rules of discipline were supposed liable to dispensation; at least the stricter Churchmen had always denied, that the Pope could infringe Canons; nor had he asserted any right to do so. It was Innocent I. who laid it down as a maxim, that he had a right to dispense with the law; and accordingly granted, among other instances of his prerogative, dispensations from impediments of marriage to the Emperor Otho IV."—*Hallam, Middle Ages,* vol. iii. chap. vii.

by persons, not very conversant with the subject, from the effect of your Lordship's oral statement: for, although you speak, in the first place, of marriage with a wife's sister only, the observations with which the subject closes, are general, and equally include a marriage with a deceased wife's niece (which had also been the subject of debate); and you refer to the Apostolic Canons, *generally,* without noticing a marked distinction which pervades them, as they regard the laity, and the clergy. I am sure that your Lordship will forgive me, for endeavouring to extricate the cases, from some confusion, into which the brevity of your Lordship's statement seems to have thrown them.

I believe, then, my Lord, that marriage with a deceased wife's niece, was not prohibited, either directly, or by implication, in either of those early ecclesiastical constitutions to which your Lordship has referred. I am not aware in which of the Councils of the Church it was first expressly forbidden; but it is stated, in one of the publications which have lately appeared upon this subject, "that we have no reason whatever to suppose that the Christian churches ever, once, during the *first six centuries,* prohibited marriage with a deceased wife's brother's or sister's daughter*." But however this may

* Observations on the Prohibition of Marriage, in certain cases of Relationship by Affinity, 4th ed. p. 42: written, as I understand, by a Clergyman.

be, such marriage does not appear to have been forbidden by the Councils of Agde (A. D. 506,) Epone (A. D. 517,) or of Tours (A. D. 567), whose regulations on this subject have been regarded as the settled law of the Western church for a considerable period*. And although Pope Gregory, in the year 731, extended the prohibitions of marriage to the seventh degree of relationship, whether by affinity, or blood; and Pope Zachary (A. D. 740), carried these prohibitions even as far as any relationship whatever could be traced; yet the question is, not, what was prescribed, on this subject, by the Popes, but by any, authoritative, Christian Council.

Now, it does not appear that the subject of marriage, between relations, was brought before any of those Councils which are regarded, by Protestants, as General or Œcumenical Councils†: such as were the Council of Nice, convened by the Emperor Constantine (A. D. 325); that of Constantinople, by Theodosius the Great, (A. D. 381); that of Ephesus, by Theodosius the Second, (A. D. 431); or that at Chalcedon, by the Emperor Marcian (A. D. 451). But it was by the 4th Council of Lateran, summoned by the Pope (Innocent III. A. D. 1215), that the severe restrictions on marriage between relations, imposed by the Popes Gregory and Zachary, were partially re-

* Morgan, on the Doctrine and Law of Marriage, Adultery, and Divorce, vol. i. p. 260.

† Article xxi. of the Church of England.

moved, by permitting marriage beyond the *fourth* degree, or what we call third cousins*. With regard to such of these prohibitions, my Lord, as were imposed merely by the Popes, may we not doubt their authority over us? And as to such of them as were imposed by Councils, whether general or national, may we not say, with Bishop Burnet, "We reverence those Councils, for the sake of their doctrine; but we do not believe the doctrine, for the authority of the Councils. There appears too much of human frailty in some of their other proceedings, to give us such an implicit submission to them, as to believe things only because *they* so decided them?"

My Lord, with regard to the "Canons called Apostolical," I will not presume to question their genuineness. It is sufficient for me that your Lordship has referred to them as genuine Canons of the Church; and I reject the notion professed by Daillè, that they were a fraudulent collection of clerical institutions, invented subsequently to the year 450. I believe that the most probable† date attributable to them, (for divines are by no means agreed upon this subject), is about the middle of the fourth century. It is true, my Lord, that one of these canons declares "That whosoever shall marry, after baptism, his deceased wife's sister, shall be incapable of becoming a bishop, priest, or

* Hallam, Mid. Ages, vol. ii. c. 7.

† Bishop Beveridge, Annot. in Canones Apostol. Pandectæ Can. See Appendix, Note A.

deacon, or any one of the catalogue of the clergy." It is also true that the Council of Eliberis*, (or Elvira, or Granada,) in Spain, to which your Lordship has referred, as having been assembled A. D. 305, enjoined five years' penance to the man who married his wife's sister; but, with this proviso—"Nisi fortè dari pacem velocius necessitas coegerit infirmitatis;" and it must be remembered, that this Council of Eliberis, was not a General Council, authorized to declare, by its canons, the doctrine of the Universal Church, but that it was a mere Provincial Council of the neighbouring clergy; and (as Dr. Burton observes) "its decisions were binding only, upon those churches which sent Bishops to attend it."

This, then, my Lord, is the substance of the ancient Law of the Church upon this subject, to which your Lordship has referred. Certain Canons, supposed to have been made in the course of the fourth century, declared, "That the man who, after baptism, married his deceased wife's sister, could not become a clergyman." A Provincial Council, chiefly of Spanish Bishops, in a remote province of the Roman Empire, determined, in the year 305, "That the man who married his deceased wife's sister should undergo a certain penance." But in neither of these ancient systems of Ecclesiastical Law, is marriage with a wife's niece forbidden, and in neither of them is

* See Appendix, Note B.

it declared "That a marriage with a deceased wife's sister shall be null and void." On the contrary, the learned Grotius concludes, from the penalties attached to the violation of these prohibitions, and from the absence of any declaration of nullity of such marriages, that the marriages themselves were *good and valid*. The following are the words of this eminent theologian:—

"Certe Canonibus antiquissimis, qui apostolici dicuntur, qui duas sorores alteram post alteram duxisset, aut ἀδελφιδὴν, id est, fratris aut sororis filiam —(not his *wife's* niece, my Lord)—*tantum a clero arcetur.*"—*De jure bel. et pac.* 1. 2, § xiv. 2.

In a subsequent chapter he adds—

"Sed sciendum simul est, non quod vetitum est fieri *lege humanâ, si fiat, irritum quoque esse, nisi et hoc lex addiderit aut significaverit.*—Canon Eliberensis LX. Si quis post obitum uxoris suæ sororem ejus duxerit, et ipsa fuerit fidelis, per quinquennium eum a communione abstinet: *eo-ipso ostendens manere vinculum matrimonii.* Et ut jam diximus, in canonibus, qui Apostolici dicuntur, qui duas Sorores duxerit, aut fratris filiam, *tantum clericus fieri prohibetur.*"—*Ibid.* § xiv. 4.

As your Lordship has appealed to the Apostolic Canons, and the early Spanish Council of Eliberis, as authorities in favour of the present prohibitions, it may not be altogether irrelevant shortly to examine the pretensions which these authorities carry with them, when addressed to a Protestant country in the nineteenth century.

Your Lordship well knows, that it was in the third century of Christianity, that the ascetic notions professed by some of the early and unorthodox disciples of the Church, began to exhibit themselves in various ways regarding the institution of marriage. Mosheim has the following passage, when describing the manners of the clergy during this century:—He says, "That marriage was *permitted* to all the various ranks and orders of the clergy, high and low. Those, however, who continued in a state of celibacy, obtained, by this abstinence, a higher reputation of sanctity and virtue than others. This was owing to the almost general persuasion, that they who took wives were, of all others, the most subject to the influence of *malignant demons*. As it was of infinite importance to the interests of the Church that no impure or malevolent spirit entered into the bodies of such as were appointed to govern or instruct others, so the people were desirous that the clergy should use their utmost efforts to abstain from the pleasures of the conjugal life. Many of the sacred order, especially in Africa, consented to satisfy the desires of the people, and endeavoured to do this in such a manner as not to offer entire violence to their own inclinations. For this purpose they formed connections with those women who had made vows of perpetual chastity; and it was an ordinary thing for an ecclesiastic to admit one of these fair saints to the participation of his bed, but still under the most

solemn declarations, that nothing passed in this commerce that was contrary to the rules of chastity and virtue. These holy concubines were called by the Greeks, Συνεισάκτοι; and by the Latins 'Mulieres subintroductæ.' This indecent custom alarmed the zeal of the more pious among the bishops, who employed the utmost efforts of their severity and vigilance to abolish it, though it was a long time before they entirely effected this laudable purpose*."

My Lord, I trust I shall not fall under the imputation of speaking with unbecoming levity of any of those ancient institutions, to which your Lordship has referred, for reasons, why the Clergy may be expected to pause, before they consent to alter any part of the present Marriage Laws of England. Nothing can be farther from my intention. I am well aware, that the peculiar circumstances of the Church, at that early period of its history, struggling, as it were, for existence, in the midst of a heathen and corrupt population—(and nothing can be more shockingly gross and demoralizing than many of the heathen customs, as regards the intercourse of the sexes)—should have rendered necessary, a much stricter code of discipline, than its matured and settled state requires, in this Christian country.

But, my Lord, the fact is, that these two early ecclesiastical constitutions, to which your Lord-

* Mosh. Eccl. Hist. part ii. c. 2, s. 6.

ship has referred, contain certain connubial precepts and prohibitions, which it is obvious that it would be altogether impossible and unnecessary to maintain, in the present state of the Church. Thus, my Lord, it was by a Canon of this Council of Eliberis, that the first traces are to be found (imposed, at least, by any Christian *council*) of that compulsory celibacy of the Clergy, which so tended to exalt the power of the Church, while it corrupted and demoralized its sacred ministers. It was by a Canon of this council that those orders were pronounced, respecting the intercourse of the married Clergy with their wives, which I take leave to veil under the comparative obscurity of a learned language*.

* Canon xxxiii.—"Placuit in totum *prohiberi* episcopis, presbyteris, et diaconibus, vel omnibus clericis positis in ministerio, *abstinere se* a conjugibus suis, et non generare filios: *quicunque vero fecerit (!)* ab honore clericatus exterminetur."

There is an obscurity of construction, as well as of language, here. The canon has been generally supposed to prohibit all connubial intercourse between the married clergy and their wives; and such, among modern writers, who immediately occur to me, is the opinion of Dr. Burton (Hist. Church, c. xvii.), and of Mr. Milman (Hist. Christianity, vol. iii. p. 385): and such *originally* was the belief of the reverend author of a work which has lately appeared on the subject of religious celibacy, who says, "that the marriage of clergymen was discouraged by a distinct rule of this council."—(The Doctrine of Holy Scripture, and of the Primitive Church, on the subject of Religious Celibacy, by James Beaven, M.A. Curate of Leigh, p. 111, 1841.) But he afterwards corrects himself (p. 155), and says, that he had fallen into an error "through trusting too much to the judgment of others, and to the general candour of Dupin;" and tells us that the canon, in truth, *positively forbade the clergy*

Bingham states, that this same Council of Eliberis "began to be a little more rigorous to the married clergy; *but it does not appear that their laws were of* ANY *force*"!! Indeed, if we consider the circumstances of the times in which these ancient institutions were enacted, we shall find that by far the greater part of them were only rules of discipline, which can have no binding force upon Christians, at the present day*.

to abstain from connubial intercourse, or becoming fathers! Perhaps the reverend author has hastily mistrusted the general candour of Dupin, since the words, in which the punishment for breach of the prohibition is enunciated, seem sufficiently to explain the canon's meaning, and the interpretation to which his mature reflection arrived, and on which he founds an important position in his work, appears perfectly ridiculous to a learned episcopal commentator on these canons, who says that there is not the slightest doubt upon the subject. Gabrielis Albaspinii, Episcop. Aureliensis, Notæ in Canon. Concil. Eliber. on 33d Canon. "Ridicule hunc ita quiadam interpretantur, quasi eo prohibitos clericos, *ne* ab uxoribus abstinerent, et verba accipienda essent, ut sonant, *prohibere abstinere* se a conjugibus, sed tanta et tam antiqua eâ de re decreta reperiuntur, ut nihil ambigui in hoc esse potest."—Labbe, v. ii. p. 45. See Appendix, Note B.

* This Council was held about the beginning of the Diocletian persecution, and affords, says Mr. Milman (Hist. of Christianity, vol. iii. p. 385), "some curious notions of the state of Christianity in that remote province. Some of the heathen flamens appear to have attempted to reconcile the performance of some of their religious duties, at least their presiding at the games, with Christianity. There are many moral regulations, which do not give a very high idea of Spanish virtue. "The bishops and clergy were not to be itinerant traders: they might trade within the province (Can. xviii.), but were on no account to take upon usury."

With respect to the "Canons called Apostolical," your Lordship does not require to be told, that they forbade marriage, by implication, with a large class of persons, with whom there is not the least pretence for saying that marriage is forbidden by the eternal laws of God*—such as were an actress! a widow!†—and this, under the same penalty as marriage with two sisters in succession,—namely, exclusion from all Sacred Orders!

It was also, by the Canons called Apostolical,

* The Apostolical Canons seem to shew, by internal evidence, that they were not of earlier date than the beginning of the *Fourth* century; for they speak of the canonical orders of Readers and Singers, and the first of these orders is not mentioned before the third, nor the latter, before the beginning of the *Fourth* century.—*Bing. Orig. Eccl.* l. iii. c. v. § 1; and c. vii. § 2.

The moral duties imposed by these Canons, present a curious picture of the state of society, at the period when they were composed. The 22d, 23d, and 24th Canons are directed against the means by which Origen is said to have disarmed the tempter.—*Vide Gibbon.* Fornication, perjury, and theft, (Can. 25), simony (c. 29, 30), clerical rebellion (c. 31), gaming and drunkenness (c. 42, 54), usury (c. 44), fellowship with heretics, (c. 45), and other offences, are expressly prohibited to the Clergy. After ordination, none of the Clergy were allowed to marry, except the readers and singers (c. 26), but if a bishop, priest, or deacon, abstain from marriage, flesh, or wine, (a curious combination!) *οὐ διὰ ἄσκησιν, ἀλλὰ δίὰ βλελυρίαν,* "not for exercise sake, but as abominating the good creatures of God;" *καὶ ἐπιλαθόμενος ὅτι ἄρσεν κὰι θῆλυ ἐποίησεν ὁ Θεὸς τὸν ἄνθρωπον,* "he is to reform, or be deposed" (c. 51).—Bever. Cod. Can.

† *Ὁ χήραν λαβὼν, ἢ ἐκβεβλημένην, ἢ ἑταίραν, ἢ οἰκέτιν, ἢ τὴν ἐπ' σκηνῆς, οὐ δύναται εἶναι ἐπίσκοπος, ἢ πρεσβύτερος, ἢ διάκονος, ἢ ὅλως τοῦ καταλόγου του ἱερατικοῦ.*—(Can. 18.)

that marriage was forbidden with a slave! Now, whatever may have been the views of Heathen Rome, whether republican or imperial, with regard to this unhappy race of men, this was the first *Christian* ordinance which declared that any class of their fellow-creatures should be debarred the blessings of the married life. This most unholy injunction prevailed in Europe, as late as the time of the Emperor Charles V. Dr. Robertson thus describes the miserable condition of the feudal slave during the middle ages:—He says "They were not originally permitted to marry;—male and female slaves were allowed and even encouraged to *cohabit* together. But the union was not considered as a marriage; it was called *contubernium,* not *nuptiæ* or *matrimonium.* This notion was so much established, that during several centuries after the barbarous nations embraced the Christian religion, slaves, who lived as husband and wife, were not joined together by any religious ceremony, and did not receive the nuptial benediction from a priest. When this conjunction between slaves came to be considered as a lawful marriage, they were not permitted to marry without the consent of their master, and such as ventured to do so without obtaining that, were punished with great severity, and sometimes even put to death!" And it was

* Robertson's Hist. Charles V. vol i.—Note ix.

by means of the Apostolical Canons, that this cruel state of things first received the countenance of any Christian Church!

These same Apostolical Canons also excluded from the hierarchy, the priesthood, and all sacred orders, the man who had contracted any second marriage whatever*, as well as him who had married two sisters in succession†. An injunction this, which surely cannot be supported by any law of God, or have any, the smallest, obligation upon us!

As the doctrine of the early Christians, upon the legalized union of the sexes, seems necessarily introduced into the discussion, when examining the value of their early prohibitions of marriage (and especially of those of the Apostolical Canons), with reference to the altered circumstances of the present day, I cannot do better than quote what is said, upon this subject, by a venerable dignitary of our priesthood, whose learning and high character are a sufficient warrant for his accuracy and good will towards the institutions of that Church of which he is so distinguished an ornament. I shall thus avoid the possibility of an imputation, that in writing what

* Ὁ δυσὶ γάμοις συμπλακείς μετὰ τὸ βάπτισμα, ἢ παλλακὴν κτησάμενος, οὐ δύναται εν αι ἐπίσκοπος, ἢ πρεσβύτερος, ἢ διάκονος, ἢ ὅλως κοῦ καταλόγου τοῦ ἱερατικοῦ, (Can. 17).—*Bever. Cod. Can.*

† Ὁ δύο ἀδελφὰς ἀγαγόμενος, ἢ ἀδελφιδὴν οὐ δύναται εἶναι κληρικός.—(Can. 19.)

I am *compelled* to write upon this subject (for it is of the very *essence* of the matter, as regards the *intrinsic* authority of the prohibitions in question), I am actuated by any motive, excepting that for which I cannot be blamed, a desire of working out the Truth.

The author of *Nuptiæ Sacræ* (Dean Ireland) thus expresses himself:—

"The first ages of Christianity were marked with an uncommon severity on the subject of Marriage. And there were many reasons which conspired to produce it. The outward circumstances of the Church were one powerful cause; and St. Paul, himself, argues strongly, from the dangers and persecutions to which the converts were subject, in order to dissuade from marriage all those who could possibly contain. (1 Cor. vii. 26.) Another cause was the erroneous, or premature interpretation which some affixed to the declarations of certain of the Apostles, "that the time was short," and "the end of all things was at hand." *They* would not be eager to engage themselves in worldly connections, who were in the constant expectation of that last hour which should dissolve every earthly tie. The old writers supply, still, another cause:—the mixture with Gentile families might violate the purity of Christianity, or tend to throw the married believer back again to the pollutions of Paganism. With such impressions as these on their minds, there were some who forbade all marriage as profane.

St. Paul* foretels this heresy, which soon sprung up (1 Tim. iv. 3). They were commonly known by the name of "Marcionites;" and by a figure drawn from that part of our Saviour's discourse, in which some were said to have made themselves "eunuchs for the kingdom of Heaven," were also called "Spadones" (Matt. xix. 12).

"A sect, which made far more noise than the former, was that of the Monogamists, known, also, by the name of Novatians and Montanists; and their great tenet, as pronounced by him, who has supported it, with equal vehemence and want of his better judgment, was one God and one Marriage†. With them, the question was not concerning the legality of marrying again after divorce, but of marrying at all after the death of either party. St. Paul had given particular directions to the Bishops and others of the Church, that each of them should be "the husband of one wife‡." The peculiarity of the Monogamists consisted in extending this pre-

* Our author entertains a different notion, on this subject, from that of the writer in the *British Magazine*, Nov. 1840, p. 506.

† Novimus unum matrimonium, sicut unum Deum.—*Tertullian, de Monog.*

‡ The ancients were not agreed upon the meaning of the apostolic precept, that a bishop, &c. "shall be the husband of one wife." There was consequently a difference of practice in the Church as to the ordination of *Digamists*. Origen, and Tertullian, (after he became a Montanist), and others of the Fathers, whose notions on this subject were marked with a peculiar severity, resolutely excluded from the priesthood all persons who had twice

cept to themselves. They saw the force of the Apostle's argument to the clergy. They had nothing to do but to prove that they were on the same footing—all of them "an holy people unto the Lord:" and this being done, the prohibition against every second marriage, followed as a necessary consequence. On this point Tertullian has a world of strange reasoning. He makes great use of the original marriage in Paradise, pleads not its absolute indissolubility, but its eternal obligation*: and insists much on the

married, after baptism, while others extended their prohibition to all Digamists whatever, whether they had become so before or after their adoption of Christianity. Bingham says, that, in his opinion, the most probable interpretation of the Apostle's rule was to be found, in the prohibition from orders of those only who had married many wives at the same time, or had divorced their wives without cause, and married others. That this was the sense which Chrysostom and Theodoret proposed to defend as most agreeable to the mind of the Apostle; and that it was certain that second marriages, in any other sense, were not always an insuperable objection to ordination; of which fact he adduces examples, and concludes that Bellarmine, and other Romanists, very much abuse their readers, when they pretend that the ordination of Digamists was against the rule of the Apostle, and the universal consent and practice of the Church.—Bing. c. v. § 4. But, though the Romanists be right in this interpretation of St. Paul's direction, surely the circumstances of the Church in the Apostle's time may have been a sufficient reason for the precept, without making it a rule of universal obligation. And may not the same be said of marriage with a wife's sister?

* "Semel hoc factum et pronunciatum, sicut ab initio, ita et nunc in aliam carnem convenire non potest.—*Ibid.* And, again, Plures costæ in Adam et manus infatigabiles in Deo.—*Exhort. ad Cast.*"

one rib singled out from the many Adam carried about him, and which might have been taken for the making of more wives if more had been allowable, &c. If their opponents objected to the novelty of their doctrines, they dwelt on the communications of the Paraclete, and his inspirations, subsidiary to the Gospel.

"The Orthodox of those ages, who, by the Monogamists, were branded with the name of "carnal men," (*Psychici*), and the "men of nature," (*Physici*), allowed more than one marriage. But St. Paul's precept was used, notwithstanding, as a constant check upon this liberty. It might be done "only in the Lord." And the necessity of this caution was part of the standing doctrine of the Church. Jerome, who, by the way, affirms the prohibition to the Bishops, &c. before mentioned, contends, indeed, that the Apostle did not mean to extend it to other men. Yet he takes great care to add, that St. Paul was far from exhorting to second marriages; he only condescended to the demands of the flesh—*necessitati carnis indulget*. Similar to this was the language of others. And whoever reads Chrysostom's Sermon to a Young Widow, concerning the future disposal of herself, will find a great deal of this reasoning. If she could not contain, she might marry, without sin. But every previous effort was to be used; and all the reasons, both spiritual and temporal, the better management of her time

in the duties of charity and prayer, and an enviable freedom from the cares of the world, and the humours of her husband, are set in array against a second implication of herself in the inconveniences of matrimony. But the Church was sadly pushed by the force of natural corruption: and frequent were the constitutions and decrees drawn forth by the pressing demands for more and more wives in succession. Two might be had, with the bare preservation of character. Three were unlawful. Any addition to these was plainly indicative of gross and uncontrollable licentiousness. Gregory Nazianzen had called the man of four wives, no longer a man, but, indeed, in the Bishop's own phrase, "a downright hog." The children of such marriage were *declared bastards*. But some mitigation was at length applied by the Roman penitential, which ordered a fasting of three weeks for a third wife, and twenty-one for a fourth: after which, all was well again*."

Thus, then, my Lord, we may perhaps conclude, that although a second marriage was not absolutely *prohibited*, even to the Clergy, in the times immediately succeeding that of the Apostles, its allowance was limited and curtailed in many particulars, which are not necessary, now; and we may conjecture that prohibitions of marriage between

* Here is Gregory's scale of marriages:—Τὸ *πρῶτον νόμος, τὸ δεύτερον συγχώρησις, τὸ τρίτον παρονομία. Ὁ δὲ ὑπὲρ τοῦτο,* ΧΟΙΡΩΔΗΣ.

certain degrees of kindred, stand on a similar foundation, as those which forbade all second unions whatever—namely, a forced interpretation of Scripture, and the supposed exigencies of the times. This much, however, is clear, that—whatever may have been the laws of the early Church, regarding second marriages of the *Clergy*—a second marriage with a deceased wife's sister or niece, was never forbidden to the *laity* during the whole course of the three first centuries, or before the Council of Eliberis, A. D. 305; and this, my Lord, upon the question of *practice*, during the purest, subapostolical period of the Church's history, is a very material *fact*. But enough, my Lord, of this. Sufficient, I trust, has been said to shew, that those ancient institutions, to which your Lordship has referred, (whatever good evidence they may afford of regulations, perhaps, necessarily, imposed upon the church, during that early period of her history,) are not, in themselves, of intrinsic authority, sufficient to forbid an alteration in them, at the present day.

But your Lordship has truly observed, "That there is a difference between repealing a law which is of recent enactment, and one which dates almost from the Church's foundation; that, *if the restrictions are right*, the facilities with which dispensations of them may, or might, be obtained, was only a proof of the corrupt state of the Roman Church, and no argument against the restrictions themselves;—and that, although the

habitual violation of positive law was in itself an evil, as tending to demoralize the people, the same might be said of *all* prohibitory laws touching questions of morality and religion, and was no argument for repealing a law when founded on these principles." My Lord, it is impossible to deny any one of these propositions. If a law is ancient, for that very reason it ought not to be repealed, hastily,—and inconsiderately. But circumstances change, which have rendered laws advisable, and they ought not to be retained, if they are no longer necessary. And, surely, my Lord, if a law be merely *positive*, if it be not founded on the immutable principles of morality and justice, it is *some* argument for repealing it, to shew, that it is derived from doubtful authority; that it is easily evaded; that it leads to intolerable abuses; that it tends to demoralize the people, and to render them dissatisfied with the institutions of their country?

My Lord, the celibacy of the Clergy was, doubtless, a very ancient institution of the Church. It was not merely an invention of the Roman Canon Law. It traces its origin as far as, if not beyond, the date of any Christian ordinances whatever, regarding marriage between prohibited degrees of affinity. Mr Hallam observes*, "That this obligation, though unwarranted by Scripture, rested on a most ancient and *universal rule* of discipline;

* Const. Hist. v. i. c. ii.

for though the Greek and Eastern Churches have always permitted the ordination of married persons, yet they do not allow those already ordained to take wives. No very good reason, however," he continues, "could be given for this distinction; and the constrained celibacy of the Latin Clergy had given rise to mischiefs, of which their general practice of retaining concubines might be reckoned among the smallest."

He afterwards remarks, that "The German Protestants soon rejected this burden, and encouraged regular as well as secular priests to marry. Cranmer himself had taken a wife in Germany, whom Henry's Law of the Six Articles, (one of which made the marriage of priests felony) compelled him to send away. In the reign of Edward, this was justly considered an indisputable part of the new reformation. *But the Bill for that purpose passed the Lords with some little difficulty—nine Bishops and four Peers dissenting!* and its preamble cast such an imputation on the practice it allowed, treating the marriage of Priests as an ignominious and tolerated evil, that another act was thought necessary a few years afterwards, when the Reformation was better established, to vindicate this right of the Protestant Church."

Surely, my Lord, this is a case in point, upon the present state of the argument; and this example is enough to shew, that it is not the mere *antiquity* of these institutions that shall save

them, *if they cannot be supported by true warrant of Scripture!*

And this brings me to that part of your Lordship's speech in which you mention the *foundation* of these laws. Your Lordship was cautious in expressing your *own* opinion upon that subject. It was sufficient for the occasion, to state your belief, that a large majority of the *Clergy* would hold, that these marriages are *virtually* prohibited in the *Levitical Law*. My Lord, this is a large and difficult question, which I am incompetent to treat satisfactorily, especially in the short compass of a letter. Your Lordship knows that it has formed the contents of many bulky volumes. I may, however, take the liberty of respectfully submitting to the Clergy (whom you suppose to have built their objections to these marriages, upon the foundation of Levitical Law), the few following considerations:—

I. Is it indisputably clear that the prohibitions mentioned in the 18th and 20th chapters of Leviticus, relate to *Marriage?*

Many eminent Oriental scholars, and, among others, Sir William Jones, are of opinion, that *they do not.* I subjoin Sir William Jones's language on this subject in the Appendix.

II. Are the prohibitions of Marriages, contained in Leviticus, binding upon *Christians?*

Many most eminent Divines consider that *they are not.*

Bishop Taylor says*—"These prohibitions are part of the *Judicial* Law of Moses. And the *Judicial* Law is annulled or abrogated; and retains no obliging power, either in whole, or in part, over any Christian Prince, Commonwealth, or person." Again, he says, "Either the Judicial Law was wholly *civil,* or it was part of the *religion.* If it was wholly civil, and secular, it goes away with that Commonwealth to which it was given. *If it was part of the religion,* it goes away with the Temple, with the Lawgiver's authority, by cession to the greater, with the Covenant of Works, with the Revelation, and reign of the Messias."

Again, he says—"In the reign of Henry the Eighth, throughout Christendom, there was almost a general consent, upon this proposition, That the Levitical decrees do not, by any law of God, bind Christians to their observance!"

And assuredly, my Lord, this *must* have been so. For, why had Henry the Eighth such difficulty in procuring either the foreign universities, or those of England, either the Roman Catholics, or the Protestants of Europe, to annul his marriage with his brother's widow, if that marriage was, from the first, absolutely null and void? It is expressly forbidden by Leviticus.

* Duct. Dub. l. ii. c. 2.

And it must have been absolutely null and void, if the code of Leviticus was binding on Christians. This argument, which is urged in my late publications on the Marriage Laws, has never been answered*.

Hooker says, in the third book of his Ecclesiastical Polity, c. 10,—"The Law of Ceremonies," (and in the same chapter he includes the Judicial Law, and the whole system of the Jewish ordinances, except the Moral Law), "the Law of Ceremonies came from God. Moses had commandment to commit it to the sacred records of Scripture, where it continueth even unto this very day and hour: in force still, as the Jew surmiseth, because *God* himself was *author* of it; and for us to abolish what He hath established, were presumption most intolerable. But (that, which they in the blindness of their obdurate hearts are not able to discern), sith the end for which that law was ordained, is now fulfilled, past, and gone; how should it but cease any longer to be, which hath no longer any cause of being in force as before? *That which necessity of some special time doth cause to be enjoined, bindeth no longer, than during the time, but doth afterwards become free*†."

Bishop Burnet, in his Exposition of the Thirty-nine Articles, has some most pertinent and powerful observations on this subject. He observes, in

* Considerations, &c.

† The italics are the author's.

his Commentary on the Seventh Article,—"The whole Judiciary Law, of the Jews, except where any parts of it are founded on moral equity, was a complicated thing, and can belong to no other nation, that is not in its first and essential constitution, made and framed as they were. So that it is certain, and can bear no debate, that the *Mosaical* Dispensation, as to all the parts of it that are not of *their own nature* Moral, is determined and abrogated by the Gospel. The decisions which the Apostles made in this matter, are so clear, and, for the proof of them, the whole tenor of the Epistles of the Galatians, and the Hebrews, is so full, that no doubt can rest concerning this, with any man who reads them."

And, lest there should be any doubt of the meaning of the expression Moral Law, the learned Bishop adds,—

"By Moral Law, is to be understood, in opposition to *Positive*, a law which has an antecedent foundation in the nature of things, that arises from external reason, is suitable to the frame and power of our souls, and is necessary for maintaining of human society. All such laws are commanded, because they are in themselves good, and suitable to the state, in which God has put us here."

Observe, I beseech you, how he illustrates this position.

"There may be many things which are not unalterably moral in themselves, which yet may

be fit subjects of perpetual laws about them. *For instance*, in the degrees of kindred with relation to marriage, there are no degrees but direct ascendants and descendants, that is, parents and children, that by an eternal reason can never marry; for where there is a natural subordination, there can never be such an equality as that state of life requires: but, *collateral degrees*, even the nearest, brothers and sisters, are not, by any natural law, barred marriage, and, therefore, in a case of necessity, they might marry: yet, since their intermarrying must be attended with vast inconveniences, and tend to the defilement of all families, and hinder the conjunction of mankind, by the intermixture of different families; it becomes, therefore, a fit subject for a perpetual law, to strike a horror at the thought of such commixtures, and so keep the world pure, which, considering the freedoms in which those of the same family do live, could not be preserved without such a law."

Is this or not an orthodox exposition of the term "Moral Law," as used by our Church, in her Seventh Article? If it is—are the Levitical Laws of Marriage, binding upon the Church of England, within the meaning of her Seventh Article? If they are not, by what authority does the reverend author, whose opinion on this subject has been largely quoted, assert that these prohibitions are part of the Moral Law? Does he

not remember Bishop Burnet's Exposition of the Seventh Article, or, does he reject it* ?

The ancient Jews themselves (or at least the Talmudists), conceived that the Levitical Prohibitions were only binding on the genuine descendants of Abraham; that they did not extend to Gentiles, or even to Proselytes of the Gate. "The former," says Marmonides, "were restricted from marrying their mothers, their fathers' wives, and their sisters by the mother's side; but other marriages, forbidden by the name of incest†,

* Vide Brit. Mag. Nov. 1840, p. 502, article signed E. B. P. the initials of Dr. Pusey.

"It is argued, that the Levitical law is no longer binding. Is, then, the law of marriage simply a ceremonial or a political law ?" (Bishop Taylor says, the Levitical law of marriage is part of the *Judicial* law.) "Otherwise, our Church clearly holds the commands, which God gave by Moses concerning it, to be binding still :—no Christian man whatsoever is free from the obedience of the commandments which are called *Moral*."—(*Art.* vii.)

† Bishop Taylor says, "The word '*Incest*' is not a Scripture word, but wholly heathen; and signified, amongst them, all unchaste and *forbidden* marriages; such as were not sanctioned by law and honour: an inauspicious conjunction, 'sine cesto veneris,' in which their Goddess of Love was not president; marriages made without her girdle, and so 'ungirt,' 'unblessed.'" He adds, that the term was adopted by the civil law, and that 'incestæ nuptiæ' meant marriages forbidden by *positive* law, and were different from 'nefariæ nuptiæ,' which were marriages contrary to the law of nature—'nefas veneris.' The learned Bishop adds, "of this deep tincture, none are, excepting marriages in a right ascending and descending line." I omit quoting the remainder of the passage, under the fear, that the Bishop, or myself, may be misunderstood, which, on this subject, is, unhappily, too often the case. Nevertheless, he draws a sound distinction between the lineal and collateral degrees of relationship. —*Duct. Dub.* l. ii. c. 2, v. 3, s. 24.

were permitted and were lawful to the Gentiles *."

These, my Lord, are some few authorities upon this subject, that immediately suggest themselves. Your Lordship can doubtless add numerous others, to the same effect, from those stores of learning you possess, and which I have not had opportunities of acquiring.

III. If these prohibitions are still binding on Christians, are the punishments provided by the Jewish codes for the violation of them, also obligatory upon Christians ? Is it our duty to punish the breach of these commands with death ? Ought marriage with a wife's niece or sister to be punished with death ? And if the punishments are abolished, what authority have we for maintaining the prohibitions ? Why are they not to stand or fall together ? Is a man *bound* to marry his brother 's widow, according to the injunction in Deuteron. xxv. 5, if his brother die without children ? If he is not, what is the ground of distinction between the cases ?

IV. Are we justified in extending the prohibitions of marriage beyond those *expressly enumerated* in Leviticus ?

* Selden, De Jure Nat. et Gen. l. v. c. 11.—Morgan on Marriage, vol. i. p. 206.

Leviticus, xviii. v. 6, declares, "That none shall approach (I assume in marriage) to any that is near of kin to him;" but, from v. 7th to 17th, there is an enumeration of seventeen persons, near of kin, with whom a man is expressly forbidden to marry. Is, or not, this a judicial interpretation of the term "near of kin," used in the 6th verse? Among these persons, several are enumerated, whom it would not be necessary to mention, if the prohibition of one case necessarily implied a prohibition in another case, exactly corresponding to it. Thus, marriage is forbidden with a man's Mother (v. 7), and also with his Daughter (v. 17); with his Father's Sister (v. 12), and with his Mother's Sister (v. 13); with his Sister (by the same Father and Mother—v. 9), also with his Sister (by the same Mother, but a different Father—v. 9), and with a Sister (by the same Father, and a different Mother—v. 11); with his Wife's Son's Daughter (v. 17), also with his Wife's Daughter's Daughter (v. 17).

These several degrees are all specified by name. It is not considered as sufficient that one case is, by, what is called, "parity of reasoning," included in a former case. Why is this double enumeration made? Is it for the purpose of excluding (for some reason God has not been pleased to reveal) the argument by "parity of reasoning" from these prohibitions? Is it clear that it is not so?

Again, in the 20th chapter of Leviticus, Moses,

delivering the law of God, repeats the prohibitions of marriages, (assuming, that in either case, it is marriage he is speaking of),—prohibitions, which he had before enumerated in the 18th chapter. He repeats them literally. He does not give the converse of the cases he had before specified. He says, in the 18th chapter, "Thou shalt not marry thy Father's Sister;" but he does not say, in the 20th chapter, "Thou shalt not marry thy Brother's Daughter." Yet this is the converse law. The Jews religiously abstained from marriage with a Father's Sister; but marriage with a Brother's Daughter was common among the Jews*. Now a general custom is a good expositor of law.

V. Further, though parity of reasoning be properly applicable to the generality of the above cases, is it necessarily applicable to the cases of a deceased wife's sister? A man may not marry

* It does not appear that the marriage of Herodias with Philip (from whom she eloped to live with his brother, Herod Antipas,) was reprobated by the Jews, or condemned by John the Baptist, or by the Evangelists St. Matthew or St. Mark; on the contrary, she is styled, by them, Philip's "wife," without any notice of disapproval. Yet Herodias was *niece* of both *Philip* and *Herod*, being the daughter of their brother Aristobulus: and Herod's sin was that of *adultery*. Vid Matth. xiv. 8; Mark, vi. 17; Josephus, Ant. lib. xviii. c. 7; Prideaux's Connection, part ii. b. 9.; and Burton's History of the Church, c. ii.

a brother's widow,—does it necessarily follow that he may not marry a wife's sister? Yes! if parity of reasoning applies to it. But does it apply to it, when there is an express law declaring, that the Jews, (who were allowed polygamy), should not marry a wife's sister *in her life time?*

Can parity of reasoning, be made to apply to a case, which is amply provided for, by its own, distinct, independent, enactments?

A learned judge*, (who had occasion to inform himself accurately on this subject, both as to its law, and fact) observes, in giving judgment, "Within the meaning of Leviticus, and the constant practice of the commonwealth of the Jews, a man was not prohibited from marrying his wife's sister, *absolutely*; it was only during her life; after that he might: so is the text."

Here also again. The custom is the best interpreter of the law. "Accedit optima legis interpres consuetudo."

These few questions I would beg leave respectfully to submit to the consideration of such of the Clergy as found their objections to Marriage with a deceased Wife's Niece or Sister, upon the supposed Prohibitions of the Jewish Law.

* Chief Justice Vaughan. Vide Harrison *v.* Barwell, Vaug. Rep. p. 241.

And now, my Lord (as I am unable to comprise the whole of my observations upon your Lordship's Speech within the compass of a single Letter), I beg leave, for the present, to subscribe myself,

With the greatest respect,

Your Lordship's

most obedient, humble servant,

H. R. REYNOLDS, JUN.

LINCOLN'S INN.

APPENDIX.

NOTE A.—Apostolical Canons.

Mr. Horne, in the Memoir of Bishop Beveridge, prefixed to his edition of the bishop's English works (1824), p. xlii., gives the following account of the date and genuineness of these canons:—

"Bishop Beveridge, in his notes on the Apostolical Canons, had fixed their date at the end of the second or the beginning of the third century; taking a middle course between the opinion of Francisco Turiano, who affirmed that they were all made by the Apostles at the council of Jerusalem, and that of Jean Daillè, an eminent minister of the French Reformed Church at Paris, who maintained that they were the production of some anonymous writer, who forged these pretended Apostolical Canons before the end of the fifth century. The strictures of Beveridge on the hypothesis of Daillè, called forth the observations of Larrogne, to whom the "Codex Canonum Primitivæ Ecclesiasticæ Vindicatus" is designed as a reply. The bishop has here re-asserted and vindicated the date which he had assigned to these canons, with much learning and ingenuity. The judgment, however, of the learned is not in unison with his vindication. These pseudepigraphal canons are unquestionably of great antiquity; but although they bear the name of the Apostles of our Lord Jesus Christ, they are utterly destitute of the internal evidence necessary to support that claim, not being quoted by any Christian writer of the first three centuries. They are also destitute of internal evidence, and contain many expressions and allusions which are manifestly later than the times of the Apostles, as well as unworthy of them, together with many inconsistencies, and much false history*. They are now generally admitted to have been compiled about the middle of the fourth century."

The Apostolical Constitutions to which these Canons are annexed, were much relied upon by Mr. Whiston, in support of his heretical notions of the doctrine of the Holy Trinity. And Dr. Waterland, a great authority upon such a subject, thus speaks of the value of the Apostolical Constitutions:—"You do not expect," says he, "that I should take any notice of the Apostolical Constitutions, so often and so unanswerably proved to be a patched, spurious, and interpolated work."

* See the proofs, in detail, of this observation in Dr. Lardner's Credibility of the Gospel History, c. 85, (Works, vol. iii. p. 421—441, 4to.)

NOTE B.—Council of Eliberis.

It may not be uninteresting to some of the clergy to be reminded of the opinion expressed by that great champion of orthodoxy, Dr. Waterland, on the question whether a canon of this council is to be considered as evidence of the doctrine of the Catholic Church, even at the time when this council was held in the year 305. Mr. Kelsall, in his controversy with Dr. Waterland on the subject of Lay Baptism, had quoted Tertullian, and adds "that this father, in his exhortation to chastity, in arguing violently against *second marriages*, and among other arguments which he brings against them, he alleges this for one—that considering the necessity a layman may sometimes lie under (in the absence of a priest) to baptise, and do things which ordinarily belong only to the sacerdotal order, he ought also to observe sacerdotal discipline too, and that it would be a great absurdity for a man *twice married to do these things, because a second marriage, according to the discipline of those times, unqualified a man from ever being admitted to holy orders.* He insists upon the same qualification in any layman who, in case of necessity, should baptise, as the council of Elvira did some time after in their thirty-eighth canon, wherein they gave leave to those laymen only whose baptism was entire, and also had not been twice married, to baptise a catechumen in case of necessity."—Rev. E. Kelsall's Answer to Dr. Waterland, 1st Letter, Waterland's Works, vol. x. p. 48.

In answer to this argument, as regards the canon of the council of Eliberis, Dr. W. remarks—

"1. The most that can be made of this council is, that the Spanish fathers thought authorized lay baptisms valid, which does not affect our present question.

2. It does not appear that this was the current doctrine of the Church Catholic at that time, but *rather the contrary;* because if it had been so, there would have been no need of a particular canon to allow it.

3. It is not a testimony of facts, but the judgment only of a private council."—Waterland's Works, vol. x. p. 127.

It is not surprising that the council of Eliberis should have issued those orders upon the married clergy, which are contained in their 33d Canon; since, about this time, connubial intercourse was thought to disqualify a priest, from prayer for the

people, and from the administration of the holy eucharist. With regard to the former, the following are the words of Jerome:—"Si laicus et quicunque fidelis orare non potest, nisi careat officio conjugali, sacerdoti, cui semper pro populo offerenda sunt sacrificia, semper orandum est. Si semper orandum est, semper carendum matrimonio."—Adv. Jovin. p. 175; Milman's History of Christianity, vol. iii. p. 386. With regard to the latter, the following is the language of a learned commentator on the 63d Canon of this Council:—"Maritos jam electos a suscipiendis liberis temperantiæ lege, et præclarâ apostolorum imitatione, et traditione semper abstinuisse in ecclesiâ occidentati, Hieron. Epiphanii et aliorum auctoritate non ambigo: eo præsertim tempore, qui missæ sacrificium aut offerre, aut ministrare debuissent. Sed cum ex aliorum incontinentium, vel non continentum experimento agnovissent postea, multa redundare incommoda ex mutuâ illâ conjugum caritate, dum recenti carnis voluptate resoluti, marcidique toti, ad tractandum et consummandum immaculatum Christi corpus accederent, et in medio forsan sacrificio, se occasio offerret cogitandi quomodo uxoribus placere debuissent; et illo finito, sanctificatas prius manus Christi corpore, statim illas ad tractandam fœminarum turpitudinem turpius admoverent, *Divino Spiritu afflati* decreverunt, in totum prohibere, ut qui jam mariti, vel episcopi, vel presbyteri, vel diaconi aut subdiaconi ordinati sint (hoc enim significat poni in ministerio vel positos esse in ministerio) uxorios posthac amplexus recusarent, congruentem sancto ministerio quod gerebant, mentis et corporis integritatem servantes."—Vide De Confirmando Concil. Illiberitano ad Clementem VIII. Sanctæ Romanæ Catholicæ Eccle. Pont. Max.; Ferdinandi de Mendoza, lib. 2; Labbe, Can. xxxiii. c. lxvi.

The Eustathians refused to receive the sacraments from any but the unmarried clergy; and it was against them that the Canon 1 of the Council of Gangra appears to have been directed, when it anathematizes certain teachers, who blamed marriage, and said that a faithful and pious woman, who slept with her husband, could not enter into the kingdom of heaven. The 33d Canon of Eliberis was adopted by the Council of Carthage, A.D. 390.

A LETTER FROM WILLIAM JONES, ESQ.

TO

JOHN ALLEYNE Esq. Barrister-at-Law,

Author of "The Legal Degrees of Marriage Stated and Considered, in a Series of Letters to a Friend."

Temple, 13th March, 1774.

Dear Sir,

Your letter has made me rub up my old Arabick, as queen Elizabeth said of her Latin, when she spoke to the Polish ambassador; but my great fear is, lest, while I am attempting to explain, what the Jews meaned by *uncovering their nakedness*, I should only expose my own: at your request, however, I have read over *the eighteenth chapter of Leviticus* in Hebrew, with a view to discover the true meaning of the words, which you desire me to interpret; and I have examined all the passages that I could find in the historical and prophetical parts of Scripture, in which the same expression occurs.—The phrase of *uncovering the nakedness* is literally translated from the Hebrew; as *orvah* signifies nakedness, and *gala* (or, as the Arabians pronounce it, *jala*) to *reveal*, to *disclose*, to *unfold*, to *expose*, to *lay open*. In Arabick, I believe, *oriah* is the word for nakedness; but *maári*, which is derived from the same root, never denotes the parts which are usually concealed, but the *face*, *hands*, and *neck of a woman*, which are commonly exposed to view. *Aurah*, indeed, which comes from a verb implying shame, answers to the αἰδοῖα and *pudenda*, from αἰδως and *pudor;* and the Hebrew word *orvah* has frequently this sense; as in that part of the Mosaick law, where the people are forbidden to go up steps to the altar*, asher la *tegala orvatac* aleio: where the same words are used, which we find so often repeated in Leviticus.—But from what root soever the Hebrew words are derived, or whatever may be their meaning in the dialects of Asia, it is surprising, that the chapter before us should ever have been taken for the *law of marriage*, since it is apparent that all the laws contained in that chapter relate only *to the impure lusts and obscene rites of the Egyptians and Canaanites*, to the *abominable customs* and *ordinances*, as they are called, of the idolatrous nations, who were extirpated by the chosen people. This must be evident to all unprejudiced and attentive readers, from the whole tenor of the chapter: first, they are commanded to beware of imitating the *doings* of the Egyptians, and the inhabitants of Canaan; then these *doings* are enumerated with a special law against each of them; and, lastly, the general command is resumed, "Defile not yourselves in these things, for in *all these things are the nations defiled which I cast out before you.*" Now, what these impurities were we learn from history, where we find that the most shocking and disgusting ceremonies were actually performed in Egypt and Syria, by persons of both sexes, in honour of those deities, who are described by Selden and Milton, and who were worshipped in Europe under the names of Venus, Adonis, and Priapus. A nauseous picture of human depravity! That

* Exodus, chap. xx. ver. 26.

obscenities, which none but a Romish casuist could figure to his imagination, should have been practised as *religious rites*, not in Asia only, but in Greece and Italy! I cannot help believing, therefore, that the whole chapter, from which our *degrees* of marriage are called *Levitical*, contains the laws against all *obscenity* whatever, but especially against the *unnatural prostitutions* committed by the idolators of Canaan and Egypt. If any argument can be drawn from Asiatick philology, it may be worth while to add, that the Arabick verb, from which *orvah*, or *nakedness*, is derived, signifies, in the twelfth conjugation, *to commit any shameful action*, that *aûra* means *obscene*, and that *Ara* is interpreted by Golius *Promiscue facta aliis rei potestas;* but I lay no great stress on these minute circumstances, which may happen to be accidental.—No man has examined this subject more diligently than *Fry*, the author of a pamphlet, which you justly commend, and you see my opinion perfectly coincides with his. He makes another observation, which I think decisive; that the phrase of *concealing the nakedness*, not of *exposing it*, is constantly used in Scripture for the *nuptial rite*. I turned to the passage in Ezekiel, where that vehement poet, or rather orator, is describing the *covenant* with the Jewish nation, which covenant is very often (we know) expressed by the allegory of a *marriage:* his words are; *Thy season was the season of love; I spread the border of my mantle over thee, and covered thy nakedness*;* that is, I *married* thee. What is conclusive evidence, if this be not? And, if this interpretation of Leviticus be just, what will become of the canons, and rubricks on the Levitical degrees? I cannot forbear adding, that I never met with the phrase of *uncovering the nakedness*, in the sense of *marriage*, in any Arabian author; it is true, that the verd *jala* signifies in one of its conjugations, *to see a bride uncovered*, whence came the substantive *jilwa*, or, *the naked charms of a bride*, but this evidently relates to the *removal of the veil*, and Golius adds, after the Arabian lexicographers, *sublato velo:* the same word denotes also *a present of a female servant, or any other gift, made to the bride by the bridegroom;* but this sense is taken from the former, and may be interpreted, *a gift on the removal of the veil.*—Thus have I complied with your request as far as I am able, and shall ever be happy in having an opportunity to testify how truly

I am, dear sir,
Your faithful servant,
W. Jones.

* Ezekiel, chap. xvi. ver. 8.

SPEECH,

&c. &c.

THE BISHOP OF LONDON :—

MY LORDS, it is not my intention to oppose the petitions being laid on the table, nor have I any reason to complain of the manner in which the noble Lord has pleaded the cause of those who have entrusted him with these petitions. On the contrary, the temper and good feeling with which the noble Lord has discussed the subject, deserves my sincere acknowledgments; but, as a minister of that Church, whose laws are now impeached, and which I believe in my conscience, if they are overturned, will suffer materially, I feel myself bound to offer a few remarks on this occasion.

My Lords, one word before I enter on the subject-matter of the petitions, as to the manner in which the petitions themselves have been obtained. It appears that a very large number of signatures, attached to those petitions, are the signatures of solicitors, a circumstance to which the noble Lord seemed to attach considerable weight, because they were described by him, to be the signatures of persons who were likely to be conversant with the evils which flowed from the present state of the law. My Lords, the fact is, that I believe there are persons who have contracted illegal marriages of the description to which the petitions refer, or who are placed in circumstances which make them desirous of contracting them, and they have determined to make a united effort to procure a repeal of the law to which these petitions advert. They have employed highly-respectable solicitors to collect evidence, to procure petitions on their behalf, and they have also signed them; and the result is the roll of petitions which the noble Lord has this day laid before the House. But, my Lords, it is obvious that this statement (which I know to be true, because it was made to me by a person engaged by these parties in procuring these petitions) somewhat lessens the weight which is to be attached to the signatures to these petitions. And I may be permitted to remark, that although that respectable body of men may be very competent judges of the effect produced by the law to which the petitioners refer, upon matters relating to property, they are not so well qualified to judge of its religious bearings as the clergy.

Then, my Lords, as to the signatures of the clergymen, which come, I believe, from two or three dioceses, they are, after all, not more than about 300 out of a body of 15,000; it cannot therefore be urged, that the clergy

in general, or any thing like a majority of them, are in favour of the abolition of these laws. I have looked at the signatures, my Lords, and I am quite sure that some of them have been attached without a clear understanding of the object which the petitioners had in view. But, my Lords, this in no way affects the merits of the case itself, to which I shall now shortly advert.

My Lords, I must notice one or two points in the noble Lord's address, which I must say do not evince a very accurate acquaintance with the law, as it relates to marriage. The noble Lord has spoken of the old Canon law of the Romish Church. It is true, my Lords, that these prohibitions, and others, were contained in the Canon law of the Romish Church; but the prohibitions which we still have in the Church, and which it is the object of these petitioners to abolish, are of a much earlier date than what is commonly understood by the term "Canon law." My Lords, the most important of them, and especially that, the removal of which, after all, is the object in view—for it is not to be dissembled from your Lordships, that the object in view is to legalise the marriage of a husband with a deceased wife's sister—*that* was prohibited by the Church from a very early date, a date long prior to the formation of what is, in the language of lawyers, understood by the "Canon law." My Lords, it was, if not prohibited, at least condemned by implication in that very early body of Constitutions called the Apostolic Canons. It was forbidden by the Council of Eliberis early in the fourth century, a date long prior to that of the Decretals and other laws compiled by Gratian. So that, my Lords, when we stand up for these prohibitions, we do not stand up for prohibitions merely adopted by our own Church from that of Rome. We think we are acting in conformity with the demands which the Church makes upon us, if we pause before we concede so important a point as the abolition of laws relating to the holy institution of marriage, which have been in force in the Christian Church almost since the time of the Apostles.

My Lords, the noble Lord spoke of the facility with which dispensations from these prohibitory laws are obtained in the Roman Church. Why, my Lords, if the restrictions themselves are right, the facility with which these dispensations may or might be obtained, is only a proof of what we consider to be the corrupt state of the Roman Church, and cannot be used against the restrictions themselves. The noble Lord spoke of restrictions of this kind as tending to demoralise the people; the same might be said of all prohibitory laws touching questions of morality or religion. A question might in every case be raised, how far you shall censure or disapprove of a law, because it may be said, in this sense to demoralise a country. The people who commit an *improper* act which is *not* forbidden by law, commit an *illegal* act so soon as it *is* forbidden by law. And in this sense "the law is the strength of sin." But certainly that cannot be used as an argument, for repealing a law when it is founded on principles of morality or justice.

This leads me to call your Lordships' attention to the difference between repealing a law which is of recent enactment, and the abrogation of a law which dates almost from the Church's foundation. My Lords, the question whether we shall repeal, or retain an ancient law, is a question of very serious consideration; and we cannot be accused of prejudice (indeed, I must do the noble Lord the justice to say, that he no sooner uttered the word than he retracted it), if we pause before we relinquish a long-established constitution of the Church, and allow marriages within the forbidden degrees.

Now, my Lords, with reference to the foundation of these laws, I must

advert to a position of the noble Lord, who said, that he had never met with a person of whatever profession, who defended these laws upon the ground of their being founded upon any basis of moral principle.—[Lord WHARNCLIFFE: Religious principle.] Religious principle? My Lords, I am not in the habit of separating the two; with me, whatever is moral is religious, and whatever is religious is moral. The noble Lord said, he found nobody who defended them on the ground of religious principle. I am afraid the noble Lord has not embraced the opportunities which he has had of conversing with the great body of the clergy of this country, for, whatever may be the sentiments of the 300 or 360 clergymen who have signed those petitions, I venture to say, that a large majority of the 15,000 who now administer in the temples of God in this country, would hold, that these marriages are virtually prohibited in the Levitical law. My Lords, this perhaps is hardly an occasion for entering on the discussion of that difficult question, as to whether or not these marriages *are* in point of fact prohibited by the Levitical law: and I admit, that as to some of them a doubt may be entertained on that question, but I am convinced that the great body of the clergy of this country do hold, that as marriages within the degrees of consanguinity are expressly forbidden by the Levitical law, so marriages of the same degree of affinity, are, by parity of reasoning, also prohibited. Now my Lords, this may or may not be a just and legitimate mode of argument; but this, I must say, that the principle of parity of reasoning on this question has been held good, not only by divines, but by the most eminent lawyers of our own country and others. I am unwilling to trespass on your Lordships' time, but I may state, that it has always been held by the courts of law. An eminent judge, Lord Chief Justice Raymond, has said (a dictum in which I am afraid the noble Lord near me will not concur), that divines know better how to expound the law of marriage than the common lawyers, and though sometimes prohibitions have been granted in causes matrimonial, yet if it were *res integra*, they would not be granted. Bishop Jewel, who is a great authority on such a subject, speaks of this principle of parity of reasoning, and says,—

"Albeit, I am not forbidden by plain words, to marry my wife's sister, yet I am forbidden to do so by other words, which, by exposition, are plain enough. For, when God commands me, I shall not marry my brother's wife, it follows directly by the same, that he forbids me to marry my wife's sister. For between one man and two sisters, and one woman and two brothers, is like analogy or proportion."

But I understand, my Lords, that the petitioners desire to carry this principle of parity of reasoning in an opposite direction, and in contravention of an express prohibition; I understand from the noble Lord, that the restriction is to be removed, not only from the wife's sister, but from the husband's brother. I believe I may say with great confidence, that this is a proposition that will be most revolting to the feelings of clergy and laity, and will be in opposition to the sense of the country at large.

My Lords, I am ready to admit, that the same arguments do not all apply to cases of affinity, which are generally applied to those of consanguinity; and that the case of a deceased wife's sister does not come under the latter description, as the term consanguinity is commonly understood. But there is one argument which has some weight with the clergy, and I think with those who have considered the religious nature of marriage; we hold upon the authority of God's word, that man and wife are one flesh, and that to a certain extent it may be said, in a sense metaphorical indeed, and mysterious, but confirmed by Our Lord himself, they

do contract a certain kind of consanguinity, which we hold to constitute an objection to such alliances as it is now sought to legalise. This notion of spiritual or mystical consanguinity, is not supposed to be a fancy of ecclesiastics and religionists; it was held in some sense by the Roman jurists and lawgivers, as stated by the historian of the Roman empire, which at least, to a certain extent, will show, that the clergy of the Church of England in maintaining this principle, are not so bigoted, nor so prejudiced, as it has been of late years the the fashion to represent. My Lords, with respect to this particular case, the following are the words of Gibbon; he is speaking of Rome before it became the Rome of Christendom:—

"The profane lawgivers of Rome were never tempted by interest or superstition to multiply the forbidden degrees, but inflexibly condemned the marriage of sisters and brothers, hesitated whether first cousins should be touched by the same interdict, revered the paternal character of aunts and uncles, and treated affinity as a just imitation of the ties of blood."

Now, my Lords, looking at the relation of marriage as having to a certain extent, the spiritual character attributed to it by the Divine lawgiver of our Church, to that doctrine of the Roman lawgivers I must confess that I am very much disposed to accede. At all events I think we should pause well, before we take another step in the path which has been trodden with unreflecting haste within the last few years, which has done much to impair the sacred estimation of the marriage vow; and to undermine the foundation of domestic morality and fidelity in this country.

My Lords, the law passed a few years ago, in my opinion, has very materially injured the morals of this country; and, I have no doubt, your Lordships would find, if you had the means of instituting an investigation, that a great part of the marriages which have taken place within the prohibited degrees, have taken place since the 4th and 5th William IV. and have taken place under the sanction of that law in the office of the Registrars in different parts of the country. I do not believe that a clergyman, except through inadvertence, can have solemnized such a marriage. My Lords, whatever may be the effect of the statute law of marriage, the canon law is still unchanged. The noble Lord seemed to suppose that the Act, commonly called Lord Lyndhurst's Act, made valid these marriages to which it referred. No such thing; it only declared that those marriages, which had been solemnized, should not be impeached by any suit in the Ecclesiastical Court, and, as far as the rights of property are concerned, and the interests of inheritance, so far those marriages become valid; but they are not declared valid for any other purpose. And, my Lords, there are many on this bench who, if any such proposition had been made, I have no doubt, would strenuously have resisted. My Lords, it is worthy of remark, that this subject has been noticed by the present learned judge of the Court of Arches, who says,—

"Although the statute has prohibited the Ecclesiastical Courts from annulling marriages for affinity contracted before the 31st of August, 1835, yet I am by no means prepared to say that the parties may not be punished by the ecclesiastical law for the incest, though the validity of the marriage cannot be called in question, for the enacting part of the act does not make these marriages good and valid to all intents and purposes."

The truth is, my Lords, that that act did no more than restore the law of marriage in this respect to its ancient state, and give free course to the old canon law of this country. This statement is no assertion of my own, but has been made by another learned ecclesiastical judge, the present judge of the Consistory Court of London, Dr. Lushington, who says,—

"This act restored the old canon law by which these marriages were

treated as absolutely void. It was the interference of the common law courts which, in such cases, prohibited the spiritual courts from bastardizing the issue, that created the unnatural distinction of voidable and void."

My Lords, I mention this, because it is a justification of those who with me supported the noble mover of that act in his endeavours to carry it into a law, from any charge of inconsistency. We thought it right that the question should be settled; and that any person who had contracted such marriages while it was unsettled, should be saved from penal consequences; but that for the future, those consequences should be known beforehand as certain; and that persons should be deterred, if possible, from contracting those marriages by knowing that they would be *ab initio* void.

My Lord, this induces me to say a word or two on that part of the question, as to the extreme hardship of such prohibitions. I admit, my Lords, that no prohibitions should be admitted, if possible, which are not sanctioned by the laws of God or the laws of nature. But, my Lords, it is not a valid argument on the part of men who object to such restrictions to say, that they feel them in their own persons to be a hardship. Why do they feel them to be so? Because they cannot tame and regulate their own passions and inclinations to submit to what the Church and the State consider a salutary law. Persons, no doubt, might be found, my Lords, who would argue, and not without some plausibility, even against those restrictions which are founded on the law of nature. My Lords, what is the law of nature? I am not going to enter into a discussion on the subject, but merely to make this remark; what the noble Lord speaks of as the law of nature, and which I am disposed to admit is the law of nature, in one sense, is not recognized as the law of nature by all people, and at all times. My Lords, there is hardly a prohibition with respect to marriage, grounded on the law of nature, which has not been departed from in some age and in some country of the world. There is no tie of consanguinity so near, but that it has been lost sight of in the contracting of marriages, by some one or other of the nations of the heathen world. I mention this, my Lords, to show that there must be a certain vagueness of definition as to such a point; that it is not easy, independently of revelation, to decide the line, at which the law of nature ceases to operate, and that of expediency begins. My Lords, we may conceive persons, standing in a near degree of relationship, who might say there was cruel hardship in preventing their marriage, if they had formed what they might consider natural attachment; but, my Lords, we must stop somewhere, and our guides ought to be, first the laws of God, and then social expediency. My Lords, I have dwelt longer than I intended on the questions of these prohibitions as founded on the precepts of God's law, and I will not trespass on your Lordships further on that point, because that may be more properly discussed at length, if ever a measure should be introduced into this House for the purpose of abrogating these restrictions.

But, my Lords, allow me to say a word or two with respect to its expediency. It may be expedient, that persons who are now living in a state of discomfort and anxiety, if not in a worse state, from the present condition of the law, which they well knew, but disapprove, should be placed in a state of less anxiety and less discomfort, and perhaps in many instances less immorality; but are we to sacrifice what we consider to be the barriers of domestic comfort and good morals, to gratify the scruples or remove the difficulties of comparatively a few persons, who have knowingly involved themselves in difficulty? When the fact is once known, that it is impossible to contract a marriage with a certain person,

say a wife's sister, why should there be any more difficulty in a man's shaping his affections, inclinations, wishes, and thoughts in such a line, as to shut out from his contemplation all idea of marriage with that person, any more than with his own sister by blood? I see none. What is there to prevent our minds entertaining a criminal attachment towards the nearest relations, but the knowledge of such connections are forbidden and must never take place? I know, my Lords, this might be carried too far; but in the case of a wife's sister, or one's own sister, I think the same principle of self-restraint which operates in the one may be safely and properly required in the other.

Now, my Lords, with regard to the question of expediency. I look at the state of society in this country, and I see reason to think, that the prohibitions which prevent the intermarriage of persons within certain near degrees of affinity, is the very safe-guard of our domestic relations. Whatever advantages, my Lords, might result from its removal, in my opinion, they would be more than counter-balanced by the evils that would flow from that measure. There are cases, my Lords, I admit, where a widower is desirous of marrying the sister of his deceased wife, because he thinks that he has thereby a fairer chance of obtaining for his orphan children a kind mother, and a faithful protectress, than if he were to introduce under his roof a strange step-mother; but there are many more cases, in the propotion of fifty to one, where the husband would be desirous of having the benefit of the same maternal care over his orphan children, shown them by the sister of his deceased wife, without any intention of marrying her; where perhaps his affections so linger about the grave of his deceased partner as shut out altogether from his mind, thoughts of future marriage; where he would be grateful to have bestowed on his children the tender care of his deceased wife's sister, an advantage from which they would be utterly precluded, if it was known that it was possible for him to marry that sister. For, my Lords, the state of society in this country is such, that it is held impossible for a man and a woman, not past a certain age, to live together with respectability and propriety, without marriage, if they are persons not prevented by any legal impediment from contracting it. My Lords, I hold that this is a distinction between ourselves and some nations of the the Continent very much in our favour; and most sorry should I be, to see the day when that distinction should be removed. My Lords, a deceased wife's sister may now with propriety undertake the care of her orphan nephews and nieces, because she never can stand to their father in any nearer relation. If the prohibitions were removed, it would be impossible for the husband to invite her to come and live under his roof, unless he held out an offer of marriage. The instances where the deceased wife's sister now fills that situation are so many, compared with those where the husband would be desirous of marrying her, that I think a great deal more will be lost on the one hand by permitting such marriages, than you could by possibility gain on the other.

The noble Lord has alluded to the Continent, and has distinguished between Roman Catholic and Protestant countries. He has said, that in Roman Catholic countries they have restrictions, but they are dispensed with. With regard to Protestant countries, there are in some countries a few restrictions, and in others none at all. My Lords, I have yet to learn, that the domestic habits of the Continent are such, as to hold out by their example any encouragement to us to relax any of the restrictions which makes marriage in this country so sacred and honourable an institution.

My Lords, if I am not much misinformed, the facility of contracting these marriages which exists in Germany, has produced effects which would make the soberminded among the Germans glad to return again to the prohibitions. With regard to America, I admit the great respectability, eminent learning, judgment, and sagacity of that distinguished judge, whom the noble Lord has quoted, and who, as he rightly observed, has been cited with distinction by the most eminent lawyers of our own country. I have heard the late Lord Stowell, the great expositor of the law of nations, if not the founder of modern international law, speak of Judge Story with the greatest respect. But, my Lords, look at the state of America with reference to its population, and the circumstances in which a certain part of that population are placed. It is not very safe to argue from analogy between America and England, the countries are so exceedingly different in respect to population, and to their habits and means of subsistence. With respect to the religious part of the question, I must beg rather to demur to the opinion of Judge Story, because, if I remember rightly, there is one of his judgments in which he states, that the marriage of sisters to brothers is forbidden by the law of nature, and ought not to be allowed, but beyond that the prohibition ought not to go.

The bringing forward of this measure, my Lords, leads me to believe, what I have been told is the case, that the removal of this prohibition, of the marriage of a husband with a deceased wife's sister, is only to be the first step which is to lead, by not very slow degrees, to the abolition of all those restrictions, which cannot in the strictest sense be said to be restrictions on account of consanguinity, and I believe even some of those too. Now, my Lords, I cannot believe, that the people of this country will contemplate with any thing like satisfaction, the enactment of a law which I am told is to legalize the marriage of an uncle with his niece. Here again may be urged the same argument which I have touched on before to-night. The uncle is now able to adopt his niece, and take her into his own family, and treat her as a daughter, because she never can stand in any more intimate relation. The difference of age in these cases is sometimes not so great, but that attachments might be formed; but if it were possible for an uncle to contract a legal marriage with his niece, no uncle could ever receive his niece into his house as his adopted daughter. My Lords, these are some of the reasons which lead me very much to question the expediency of meddling with the law as it now stands.

Another reason is, one which I have already slightly adverted to—namely, the undesirableness of doing any thing to shake, further than it has been shaken, the opinion which the people of this country entertain of the sacredness of the marriage contract, and the stability and unchangeableness of those laws by which it is recognized. I must say, at the present moment, my Lords, there is not the same feeling with respect to marriage as there was before the passing of the last Marriage Act; and I am inclined to think, if this House and the other House of Parliament entertain the proposition of my noble Friend, a great deal will be done to undermine morality and weaken the hold which religion and the Church have on the people of this country. With regard to the instances adduced as having occurred at Manchester, it is quite obvious, and it cannot have escaped the attention of the noble Lord, that you might adduce instances of the violation of any of the laws of God and man from all the great manufacturing districts, because there are now in those districts thousands who are suffering from the consequence of long and criminal neglect, on behalf of those who ought to have provided for them, clergymen, and churches, and

AN EXAMINATION

OF

THE REV. JOHN KEBLE'S TRACT

AGAINST

Profane Dealing with Holy Matrimony,

IN REGARD OF

A MAN AND HIS WIFE'S SISTER.

BY

AN ENGLISH CHURCHMAN.

Thy bounteous Lord
Allows thee choice of paths.
GEORGE HERBERT.

LONDON:
HOULSTON AND STONEMAN, 65, PATERNOSTER ROW.
1849.

Price Sixpence.

London: Printed by William Clowes and Sons, Stamford Street.

The author of the Christian Year has sent forth a tract, "Against Profane Dealing with Holy Matrimony," for all English Churchmen and Churchwomen. The object of the tract is, professedly, to inform the judgment and guide the opinion of English Churchmen and Churchwomen in reference to the Bill now before Parliament to legalize marriage with the sister of a deceased wife.

Most of us to whom the tract is addressed are unlearned persons; with little leisure, and (it may be) little ability, to investigate duly this delicate subject. Hence we must have been predisposed to receive with thankfulness, and to adopt with confidence, the views of one so learned and so pious as Mr. Keble undoubtedly is. For we must have expected a candid statement of the facts and merits of the case, a fair exposition of the arguments employed by learned men on both sides, a patient analysis and impartial review of those arguments by Mr. Keble, with his own judgment thereon.

How bitter our disappointment! We find uncandid statements, one-sided arguments, facts distorted, evidence suppressed, harsh thoughts, railing accusations, and violent invective.

Alas! that this should be so; that he, usually known as the feeling, the candid and the loving, should on this occasion have entirely disrobed himself of those Christian graces for which he has generally been thought pre-eminent among men. It is very distressing to say or think this of such a man. Nevertheless truth forces from me the unwilling avowal, that Mr. Keble's tract has produced in me a feeling of intense pain and sorrow.

Mr. Keble opens his tract (p. 3) with the remark that "when people have broken the law, they are not exactly the persons to come and ask to have the law altered in their favour. Thieves, smugglers, poachers, slave-dealers, evil-

doers of various sorts, no doubt would be very glad to have their respective penalties taken off, and their proceedings made legal."

I do not stop to criticise the comparison of persons desiring to marry their sisters-in-law with *thieves*. It certainly appears to me hardly consistent with Christian courtesy; for I recognise no propriety in the parallel between persons seeking relief from a human law which *they* deem unjust, and persons appropriating to themselves the property of others by the violation of a clearly recorded law of Almighty God. Unquestionably the comparison is based on an assumption altogether without foundation, namely, that the parties seeking to have the law of marriage altered, are generally, or chiefly, parties who "have broken the law." And what if the fact were as assumed? Who should or would move, if parties experiencing real or supposed wrong, did not? What tyranny ever was, or would be, redressed, if the sufferers did not proclaim their sufferings? But the assumption is notoriously inconsistent with the fact. And the charge made by Mr. Keble is, in him, disingenuous; for he well knows that the evidence given before the Royal Commissioners on the law of marriage (which he largely quotes), proves that very many of the witnesses in favour of these marriages have not broken the law, and have no intention of so doing.

Mr. Keble, admitting that these marriages are allowed in Germany, France, and other Christian lands, asks whether we are willing to transfer to our country their marriage laws?—implying a disadvantage to those nations, and that this disadvantage results from their sanction of these marriages. This implication is not just, or supported by experience. Mr. Bach, a learned German jurisconsult, says that the laxity of morals now prevailing in Germany, springs (as, indeed, any one would suppose) *entirely from the facility of divorce;* and that so far from marriage with a sister-in-law being deemed contrary to good morals, the feeling is decidedly in favour of it.* Mr. Keble omits the evidence in the same report of Mr. Justice Storey (one

* Report of the Commissioners on the Law of Marriage, p. 53, No. 970, *et seq.*

of the most eminent men that have adorned the bench) that in America, where our own Church has put forth so flourishing a branch, and where our domestic feelings have taken root, such marriages are not only deemed in a civil sense lawful, but are deemed in a moral and Christian sense lawful, and exceedingly praiseworthy. "They are deemed," he says, "amongst us the very best sort of marriage. In my whole life I never heard the slightest suggestion against them founded on moral or domestic considerations."* In America these marriages are common, but divorce is not allowed. And in America the relations of domestic life and married fidelity are as pure as amongst ourselves.

With these few preliminary observations, I proceed to the real question for our consideration.

It has been laid down as a just principle that happiness in marriage involves freedom of choice; and that this freedom is to be restrained only within the written Word of God, or within that unwritten but unalterable will of God which we recognize as the "moral" law, or law of nature. By which of these has God interdicted marriage between a widower and the sister of his deceased wife? Mr. Keble points to Leviticus, chapter xviii.

As far as it is Levitical, it does not affect Christians. But Mr. Keble reasons that these marriages *are* contrary to the "*moral*" law (or *law of nature*), being condemned in the Canaanites, who were not under the Mosaic law, but only the law of nature. This is a very old objection; and had been disposed of for ever, as I had imagined, by the great Bishop Jeremy Taylor.† That many things by the Mosaic law forbidden to the Jews were not contrary to the law of nature is most certain, since they were practised by Patriarchs and others blessed of God; and if the prohibition be created by the Mosaic law, then is it a prohibition only to the Jews, for to them only was the Mosaic law a rule. To say that Leviticus is of the moral law, and these marriages are forbidden by Leviticus, *therefore* they are forbidden by the moral law, is surely reasoning in a circle.

* Storey, Conflict of Laws, p. 97. Report, p. 21, *n.*

† Vol. xii., p. 305.

But *suppose* the Mosaic law applicable to Christians; the question still remains,—where does that law say that a widower shall not marry his deceased wife's sister? NOWHERE in direct terms, as Mr. Keble allows, but it does by "parity of reason"—*of which more hereafter* (p. 10). But then he and his party endeavour to establish their case by a strained and mystical argument:—They say, Leviticus declares none shall marry any that is "near of kin" to him; and a man and his wife being made in marriage "one flesh," the sister of the wife becomes thereby the sister of the husband. On this doctrine of marriage making the man and woman one flesh, I shall take the liberty of borrowing some remarks from a Tract lately published, which seems to me to give the clearest and most succinct view extant of the arguments on both sides of this interesting question. It is commenting on Dr. Pusey's observation, that to doubt the literal sense of "one flesh" is irreverence.*

"Is it meant to be asserted that the words of our Lord are *always* to be taken literally? Is there a divine in the Church who would deny that they are often figurative and symbolic? The truest reverence is to receive them in that sense in which they are plainly intended; not to adhere to a literal interpretation when everything persuades us a figurative only is meant.

"Christ prays that the *faithful* may be *one, as the Father and Son are one*. But (says Gerson, as quoted by Dr. Pusey in his volume of Sermons during the season from Advent to Whitsuntide, 1848, Preface, p. xx.) of old the holy fathers with certainty expound these sayings, so that the *unity* [that is, of the faithful] *is not essential, but only assimilation and participation* is there meant; as Luke saith (Acts iv. 32), that the *multitude of believers had one heart and one soul;* and the same is commonly said of two friends.

"Bishop Patrick thus paraphrases the expression of our Lord (shall be one flesh), A man shall dwell with his wife,

* Συγγένεια. A Dispassionate Appeal to the Judgment of the Clergy of the Church of England on a Proposed Alteration of the Law of Marriage, p. 7.

rather than with his father and mother, and be *joined* to her in the *closest and most inseparable affection*, AS IF they were but *one person*, and had but one soul and one body: an obligation arising from the singular union of the *flesh of our first parents, one of whom was taken out of the other*.

"Bishop Bull (arguing that Adam spake the words, Therefore shall a man leave his father and mother, &c., by a spirit of prophecy) comments thus: As if he had said, As God has joined me with my woman into one flesh; so, *from henceforth*, every husband shall obey this *order* established by heaven; and, leaving his dearest parents, *cleave unto his wife* AS *his own flesh*.

"If it be, indeed, irreverent to doubt that by one flesh an absolute personal identity is meant, then assuredly some of the best and greatest Divines have been guilty of irreverence; for they interpret the words to mean simply a new relation, which, in intimacy and affection, should supersede all others, even that of father and mother. The very purpose for which our Saviour quotes the words of Gen. ii. 24, establishes this interpretation. That purpose is to prove that the wife may not be put away for every cause, but only for adultery. Surely the *literal* construction would have required a different declaration, viz., that the union was altogether indissoluble, and that an absolute identity of person could not be disunited even by adultery,—a conclusion to which the Romish Church is in like manner driven by the sacramental character it gives to the holy rite. That St. Paul understood one flesh in a figurative sense seems unequivocal. He quotes these very words to show that he who joins himself to a harlot, is one body with the harlot. 'Know ye not that he that is joined to a harlot is one body. For he says [*i. e., Scripture* says] the two shall be one flesh.'* Does St. Paul mean that the man becomes literally the harlot's body? Again, in that passage of the 5th Ephesians,† which is adopted into our Marriage Service, it is quite impossible to believe St. Paul holds the literal interpretation of one flesh. So ought men to love their wives as their own bodies. He does not say *as being* their own bodies, but *as though* their own

* 1 Cor. vi. 16. † Ephes. v. 28.

bodies.* And after quoting the words of Gen. ii. 24, they two shall be one flesh, he says, This is a great mystery; and instantly explains the mystery to be the union of Christ and the Church: and then adds, verse 33, Nevertheless let every one of you in particular so love his wife even as if himself. Now, had St. Paul deemed the husband and wife literally the same flesh, he could not have used the words, *as if* their own bodies, so *as if* himself. Again, had he taken the literal sense, his argument in verse 29 would be absurd. It would run thus: You and your wives are truly and really the same flesh, and no man hates his own flesh; therefore I exhort you to love your wives *as if* they were your own flesh. Had St. Paul believed them really the same flesh, it would have been absurd surely to bid a man love his wife so as if himself, if he had just laid down the proposition that she was himself,—by mysterious union literally his very flesh.

"That marriage figures the spiritual union between Christ and the Church, is freely admitted on the authority of our Church: † but that union is *spiritual*, not personal. It cannot be allowed that there is in it that sacramental character which the argument of Dr. Pusey seems unequivocally to assign it: a *character which it is believed our Church has deliberately repudiated.*"

It was this doctrine of the oneness created by marriage that so long fastened condemnation on the marriage of *cousins*. "God's Holy Word was invoked—(*the very passage quoted against marriage with a sister-in-law*)—as proving its interdiction. It was placed in the same category of condemnation as marriage with a *sister in blood:* ‡ and the terms incestuous and adulterous were freely applied to it The Voice of the Church, and Councils, and Canons, and St. Ambrose, and St. Gregory the Great, condemned it as *contrary to the Word of God;* and St. Augustine, as *contrary*

* The Greek text is clear beyond a doubt. It is "ὡς τὰ ἑαυτῶν σώματα;" not ὡς οντες. Verse 33 is still more explicit: οὕτως ὡς ἑαυτόν, which the Latin Vulgate renders *sicut seipsum*. Not one commentator on the passage, it is believed, can be found who ever supposed St. Paul to intend a literal sense.

† Marriage Service.

‡ Bingham, book xvi., cap. xi., s. 4; also, Report, p. 40, questions 445, 6, *et seq.*

to good morals and *men's right feelings*. And men anxiously turned to the BIBLE, and sought for the interdiction THERE, —*in vain*. But the denunciations of Councils, and the force of Canons, and the piety and learning of St. Ambrose, St. Augustine, and St. Gregory were brought against it. And public opinion was against it,—*because of the asserted interdiction of it by God and the Church*. And parties contracting such marriages were regarded with coldness; and friends and acquaintances stood afar off, as from persons guilty of incest. At length arose the devout and illustrious Bishop Jeremy Taylor, to vindicate the pure Word of God from man's profane perversions:—and public opinion underwent a mighty change;—and cousins now marry without reproach."*

This same doctrine† for many ages condemned the marriage of god-parents with their god-children, of the party baptizing with the party baptized, or with the parents of the baptized, and of parties between whom *any lineaments* of affinity by descent could be traced. Dr. Pusey observes upon marriage with a god-child, "*This I suppose would now also seem not natural.*"‡ This is, at this moment, the doctrine of the Church of Rome, which declares that sponsors contract affinity both with the child and its parents, the effect of which is, that they cannot afterwards marry either.§

But if we take Leviticus, c. 18, for a guide to Christians, we must take it in its integrity, we cannot take a part and leave a part. "There it still stands," says Mr. Keble, "with the curse of the Canaanites for its sanction, 'Thou shalt not marry thy brother's wife, she is thy sister.'" It does *not* so stand. The words "She is thy sister" are *an addition by* Mr. Keble! On whatever grounds the prohibition might be assumed to rest, it could not be on the ground that such

* Συγγένεια, Preface, p. xiii. The evidence of Dr. Pusey (Report, pp. 40, 41) and Bingham (book xvi. cap. xi.) furnish a list of monstrous prohibitions by individuals and petty synods, suggestive of painful reflection, and deserving careful perusal, as bearing on the present question.

† In the Greek church, it condemns and prohibits marriage between two brothers and two sisters.

‡ Report, p. 40, No. 447.

§ Report, p. 107, No. 1205.

marriage was in itself an abomination and an incest, because, in Deut. xxv., it is *absolutely commanded* if a brother died childless. Mr. Keble passes very tenderly over this. He just touches it, and no more, in a sentence so obscure, that I regret to say I cannot understand it, nor discover whether he means to admit or deny that Deuteronomy relaxes the prohibition in Leviticus. But whatever may have been the reasons for prohibiting marriage ordinarily with a brother's wife, the 18th verse of the same chapter is an insuperable bar to extending the prohibition to a deceased wife's sister. The verse runs thus: Neither shalt thou take a wife to her sister to vex her, to uncover her nakedness, beside the other, *in her life time.*

Now to the common sense of plain, unsophisticated minds this seems to say, as clearly as language can say anything, that a man shall not marry his sister-in-law *during the life* of his wife (polygamy being then allowed to the Jews), but that *after his wife's death* he may. And accordingly it is proved, indeed it is admitted, that such marriage is, and always has been, allowed and practised by the Jews. And this fact is so complete an answer and discomfiture of the argument for its prohibition, in v. 16, by "implication" and "parity of reason," that to devote a word more to it would be superfluous. Of this difficulty I think it is not too much to say, that Mr. Keble shows that he feels more the necessity of escaping it than satisfaction with his success. He does not, for he dare not, directly deny the correctness of our translation. He knows too well that it is the correct rendering of the Hebrew, and that it strictly accords with the Septuagint, Vulgate, Arabic, Syriac, and Chaldee, and, I believe, with every known version. But yet in page 16 he quietly remarks, "we are not quite sure that the verse is rightly translated," whilst in page 18 he admits that it *is;* he next brings forward a variation utterly inconsistent with the text; and lastly, suggests two different versions of his own which destroy its meaning, and of which I may say, that as he is their originator, so he is likely to be their only claimant.

Perfect novelties in Scripture interpretation made on the spur of occasion, and to elude a pressing difficulty, are always subject to very grave suspicion. Mr. Keble himself confesses that neither of these new versions are free from difficulty, but thinks their "difficulties are not to be compared with that of supposing a connexion indirectly licensed in the 18th verse, which in the 16th had been condemned under such heavy penalties." To me it seems much less difficult to believe that the plain, literal, grammatical and direct construction of verse 18, satisfactorily shows that Mr. Keble is altogether in error when he attributes to verse 16 a virtual condemnation of such marriage, than to accept either of his versions which explain away the terms and sense of the text by a method of exposition so loose, as would, if generally allowed, rob the word of God of all distinct voice and utterance. But Mr. Keble has to elude not only the clear and unambiguous terms of the text, but also the confirmation which they receive from *Jewish custom.* He disposes of it thus, "As to the Jewish commentators, both before and after our Lord's time, we are told, indeed, that the prevailing sect, the Talmudists, take altogether the laxer side in this question, but what Christian would follow them in such matters, they being the very interpreters of whom our Lord said, 'Except your righteousness exceed theirs, ye shall not enter into the kingdom of Heaven.'" (p. 19.)

Now here is a perversion of the point for consideration, and a suppression of evidence bearing upon it. The point here is not what was the *opinion* of a *sect* of the Jews, but what is and was the *actual practice* of the *Jewish nation.* It is their evidence, not their interpretation, that is in question, the traditional testimony of the Jewish Church to a fact, which one cannot, without surprise, see met with a sneer by one who places so high a value on the same traditional witness of the Christian Church on other points. The application of words addressed to a sect on a totally different matter, in order to escape their evidence as to the *existence of a custom*, I confess myself unable to reconcile either with candour, or with due reverence for the words of our blessed Lord. But the point is much too important to be suppressed by a sneer; and no candid inquirer can be justified in entirely passing over the evidence.

"*Custom* has ever been admitted to be the best interpreter of doubtful law. It is in the very nature of things

that it should be so. The ancient practice of the Jews is indisputably the best commentary on the meaning of their own law. It is decisive of the sense in which it was originally by them received. Now, what has been the *practice* of the Jews from the beginning? Have marriages with a sister-in-law been disallowed amongst them or not? Dr. Adler's evidence is clear and full on this point; and it is decisive:—It is not only not considered prohibited, but it is distinctly understood to be permitted: and on this point neither the Divine law, nor the Rabbis, nor historical Judaism, leave room for the least doubt. All the Rabbis, and here we are on the ground of historical Judaism, concur in this view of the question. For, in examining their opinions we find that they prohibit marrying with a woman after the *divorce* of her sister, BUT EXPRESSLY PERMIT IT AFTER HER DEATH. Again he says, To the best of my knowledge, *not a single opinion can be met with throughout all the Rabbinical writings which would even appear to throw any doubt on the legality, or the propriety, of the marriage of a widower with his deceased wife's sister.* And again: Such a marriage, so far from exposing the parties to any reproach, is considered proper and even laudable; and where young children are left by the deceased wife, the marriage is allowed to take place within a *shorter period* from the wife's death than would otherwise be permitted, (*i. e.*, than would be permitted in the case of marriage with any other woman), as may be seen by reference to the Shulchan Aruch, Joreh Deah, (sect. 392, s. 3).* It is admitted by Dr. Pusey, that the *prevailing construction* of the ancient Jewish Church was, that a man might marry two sisters [in succession], and that their *practice was to allow such marriages.*† If such was the interpretation and the practice of the Jews, what speculative opinion can be set up against it?"‡

From the mode resorted to of getting rid of the language of 18th verse, and from the suppression of the evidence of Jewish custom which throws so clear a light upon its meaning, I think it obvious that Mr. Keble does not him-

* Report, p. 152 (iii.) † Report, p. 39, questions 442, 3.
‡ Συγγίνεια, p. 17.

self feel his ground to be very safe. But then, he strengthens his position by the assertion, "that for many "ages the Church so understood the mind of the Lord." Undoubtedly a clear concurrent testimony of the Primitive Church against the lawfulness of such marriage, could such be found, must be admitted as decisive of the point by all faithful Christians. Dr. Pusey, in his evidence before the Royal Commissioners, states, that such marriages have been "all along," "from the first," condemned by the Church. Mr. Keble, in this tract, makes the assertion in the words above. Had they contented themselves with simply asserting this, most of us would have believed that the Church had unequivocally condemned them. For who would venture to doubt the truth of a position which men so learned have so confidently advanced? But they have given us the *proofs* on which they rely. Now, the value of these proofs depends altogether on their immediate connexion with *primitive Christianity.* Unless one can refer the tradition of a fact, or a doctrine, or a custom to the days of our Lord, or of his Apostles, or of those immediately succeeding them, one rejects it as of no value. This is the rule of Vincent of Lerins. So early as the year 434 (A.D.) it was found necessary to insist upon this cautious rule, to prevent spurious traditions from passing for the opinion of The Church from the beginning. It is a rule accepted throughout the Christian world, and insisted on by none more strenuously than by Mr. Keble and Dr. Pusey. "Quod semper, quod ubique, quod ab omnibus,"—that is to be accepted which has been "*ever, everywhere*, and *by all*" believed and affirmed.

How little do the proofs adduced answer these essential conditions of Catholicity! *Not one of them was in existence before the fourth century.* The first is the so called Apostolic Canons, a work of much disputed authority. And what is it they say—that such marriages are contrary to Scripture, and void? Nothing of the kind. I quote Mr. Keble's words (p. 22), "The 15th of these Canons is, He that marrieth two sisters or his niece (*i. e.* before he was converted) cannot be a Bishop or Clergyman." He adds, "It is the same evil mark which in the 13th and 14th Canons of the same series is set upon bigamy, and upon

other discreditable marriages, and in the 53rd, upon all kinds of unchastity." How is it that he omits to notice that the same "evil mark" is set by these very same Canons on marriage with a *Widow, an Actress, a Maid-servant, and on every second marriage whatever?* If it were true that these marriages were united in the same series with *bigamy*, and other like discreditable marriages, only (which is all that Mr. Keble allows to be known), the conclusion would be forced upon us that they were held equally discreditable. But it is not true. There is not a word about bigamy in the series. They stand thus: Canon 17.* He that, after baptism, hath contracted a second marriage, or kept a Concubine,—18. He that marries a Widow, one divorced, or a Courtezan, or a Maid-servant, or an Actress,—19. He that marries two sisters, or a niece,—cannot be a Bishop or Clergyman. Insert *bigamy*, which is not there, include the rest as "other discreditable" marriages, and they appear condemned as generally discreditable. But when they are forbidden to the Clergy together with any second marriage, marriage with a Widow, a Maid-servant, or an Actress—none of them in a religious sense "discreditable," and unquestionably allowed to the Laity—a very different inference arises. The spirit of the prohibition is apparent in the 26th Canon, which forbids, *after ordination*, any marriage whatever. But this is not all. The words "before he was converted" are Mr. Keble's own. In the Canons themselves there is nothing whatever to countenance them. But there is *very much* that should have prevented this invention. In the first of the three Canons (17, 18, 19) are the words (and they clearly apply to the other two) "AFTER BAPTISM." Beveridge prints, on the same page with the Canons, the exposition of certain ancient commentators. And the comment on these words is, that baptism purifying from all previous stain, such marriages, if contracted *before baptism*, were not a bar to Orders;—a reason which applies to all. And why have the words "before baptism"

* The inaccuracy extends to the *numbers* of the Canons. In Beveridge the Canons in question are 17, 18, 19. Nos. 13, 14, 15, are on totally different matters. No. 53, should be No. 61. It simply declares that Orders should not be allowed to whoever was convicted, after public inquiry, of adultery, fornication, or *of any other crime.*

been suppressed, and the opposite phrase "before conversion" introduced? Can it be for any other reason than to get rid of a very inconvenient, but inevitable, conclusion? The Canons *in their integrity* are conclusive evidence that marriages with the sisters of deceased wives were *known in Christendom:* Canons are not made about things which do not exist. The words "before conversion" would imply that they were known only to the heathen: the words "after baptism" compel the contrary implication, that they were known to the Christian Laity, and forbidden only to the Clergy. And thus a death-blow is, by these Canons, dealt to the assertion that, before St. Basil's day, they were unknown in the Christian Church.

If these omissions and additions be accidental, Mr. Keble is a very dangerous, because very negligent, guide; if designed, he is a *very unfaithful* guide. In a party advocate, the omission of important facts might obtain applause as shrewd and ingenious: in a writer claiming to inform and guide, it is, to say the least, especially unfortunate.

Next are cited the Councils of Eliberis and Neo-Cæsarea. Eliberis was a provincial Synod of nineteen Bishops; its Canons of no force beyond that province.* A Canon of this Synod says that if a man marry his deceased wife's sister, *the parties are to be debarred communion five years, save in case of sickness.* Another Canon (33rd) forbids marital intercourse of Bishops, Priests, and Deacons with their wives. Another Canon forbids a Bishop to have with him any other than a sister, or a daughter who is dedicated to God. Neo-Cæsarea may be dismissed with this remark —it was a provincial Synod; its Canons of no force save within that province. One of its Canons says that if *a woman marry two brothers* she shall be excommunicated until death, unless in case of sickness. Another Canon says that persons *baptized at home* shall not be admitted into holy orders;—*the same "evil mark" as is inflicted by the Apostolic Canons on marriage with the sister of a deceased*

* Waterland says Eliberis was not recognized by the Western Church, or by any of the Fathers, vol. vi. p. 178.

wife. The weight of two petty provincial Synods is certainly not great in the scale of Catholic condemnation; but Mr. Keble has found a mode of giving them force which has never, I imagine, been thought of before. He says (p. 23) "Elvira is in Spain; Neo-Cæsarea in Pontus: these marriages, *therefore,* were condemned at that time *from one end to the other of the Christian world!*" The logic of this, I confess, I cannot grasp: the disingenuousness of the argument I comprehend, and deplore.

But there still seems a consciousness that the authority of these two obscure Synods needs some additional support. Mr. Keble has supplied it in a manner which I will not trust myself to characterize. He tells us, "Lastly, in the General Council of Chalcedon, A.D. 451, (one of those Councils which our Church especially receives,) the first Canon pronounces it fit and just, that the Canons of the holy Fathers made in every Synod to this present time be in full force; thus adopting amongst others the censures which had been previously enacted against marrying two sisters." Mr. Keble knows well that the Synods whose Canons the General Council of Chalcedon confirmed were the previous *General Councils;* and no others. Does he really desire us to understand that it confirmed every Canon of every petty Synod in the Christian world, and gave its sanction to the numberless absurdities we find in them? Does he mean us to believe that the Council of Chalcedon intended to give the force of an Œcumenical Synod to Neo-Cæsarea, and to Eliberis, which was never recognized in the Western Church, nor by any of the Fathers? Does our Church receive their Canons, their regulations for the married life of the Clergy, their rejection from holy orders of persons baptized at home, all their acts, as stamped with the sanction of a general Council? It grieves one to think that such a man could stoop to such an argument.

And what is it after all that these authorities amount to? Do they say that these marriages are contrary to God's written word, or the moral law, or void? Not at all. The Apostolic Canons show that they were, *together with some other marriages never questioned by us*, a bar to Orders, at a time when a distinction was drawn between the Clergy

and Laity in this respect. Eliberis requires a penance of five years; from which penalty the learned Grotius concludes the marriages themselves good and valid.* Neo-Cæsarea excommunicates a woman, who marries two brothers, until death, or sickness. And these are the authorities on which we are called upon to believe that the Christian Church had "all along," "from the first," considered marriage with a deceased wife's sister incestuous, abominable, and void.

One thing these authorities, I think, *do* prove—that these marriages were known and practised in the Christian world. Men do not make laws, as I before observed, for imaginary cases. The existence of a law always proves the presence of that to which it refers. If such marriages had not been known we should not have had them made a bar to Orders in the Apostolic Canons, or an object of penance in those of Eliberis. They were known in Eliberis; they were known in Neo-Cæsarea. Eliberis is in Spain, Neo-Cæsarea is in Pontus. *Therefore* these marriages were practised "from one end to the other of the Christian world." If one could condescend to use such reasoning, it would here apply with far more accuracy than in the instance in which Mr. Keble adopts it.

And if the voice of Councils is somewhat scarce, yet more scarce is that of early Fathers. St. Basil is put forward to supply what Councils want—a direct condemnation. St. Basil says that "he who marries two sisters must do the penance of one who divorces his wife and marries another,"—which, says Mr. Keble, "*by our Lord's own judgment,* is an adulterer." *Our Lord says nothing of the sort.* He says that a man putting away his wife, *save for the cause of fornication,* and marrying another, is an adulterer: but for *such cause* he may put her away. But why does Mr. Keble tack this saying of our Lord to the dictum of Basil? Would he insinuate that our Lord's words have any reference to Basil's canon? And who is Basil, that his view of matrimony should claim authority? A most saint-like, devout, and learned man; but ascetic, strange, and almost idiosyncratic in his notions of marriage;—stigmatizing that holy estate which Christ adorned and beautified by His presence, and which our Church declares honourable, and

instituted of a pure God,* as POLLUTION; and taking upon himself to assert that this was the reason why our Saviour never married.†

But we are told by Mr. Keble that Basil's Canons "have been ever received as the regular law of the Eastern (Greek) Church, nor are they ever in any case there dispensed with." I give below some extracts from the Canons of the Greek Church;‡ and I shall offer one or two observations on this part of the subject. The opinion of one whose notions on marriage were so wild and degrading as St. Basil's is one of the last to be accepted in a question of its lawfulness. We demand a more sober judgment. The condemnation of these marriages by St. Basil is but a sorry pretension to Catholic tradition. The prohibition of an individual must be corroborated by further and more general evidence. Nor does the subsequent reception of his Canons by the Greek Church at all improve their claim to primitive authority. A prohibition of marriage by that Church, which has prohibited so many neither forbidden by Scripture, morality, nor the early Church, is no proof of its being contrary to Scripture, morality, or the practice of the purest ages of Christianity. It adds nothing to the weight of the argument.

The tendency in the authorites quoted to tighten prohibition as the stream goes downward is very remarkable. Strictness does not increase as it is traced upwards towards

* Marriage Service.

† Reynold's Second Letter to the Bishop of London, p. 17.

‡ A man may not marry;—
His second cousin's daughter.
His deceased wife's first cousin.
His deceased wife's first cousin's daughter.
His deceased wife's second cousin.
Two brothers may not marry;—
Two sisters.
An aunt and a niece.
Two first cousins.
A man may not marry;
His wife's brother's wife's sister (*i. e.*) his brother-in-law's sister-in-law.
His brother-in-law's wife: nor can his own brother marry her.
Godparentage and *Adoption* constitute impediments to marriage, up to the seventh degree !!!*

* Report, p. 54.

the earlier ages, but as it flows downward toward the later. Thus in the Apostolic Canons, the earliest authority quoted, the penalty on these marriages is only exclusion from Orders. In Eliberis, it is five years' penance. In Neo-Cæsarea, excommunication till death or sickness. St. Basil draws the cord still tighter; and the Greek Church, which adopts his Canons, reaches the climax of absurdity. It is the history and progress of the venerable opinion that married persons were more readily possessed of devils than unmarried. It began by restrictions on the Clergy, which were multiplied gradually, and extended to the Laity; and it terminated in prohibiting marriage to the Clergy altogether.

I hope I may be permitted to make one more extract from the pamphlet I have before quoted:—"It certainly strikes one with astonishment that, to support the large and oft-repeated assertion that *this union has been all along contrary to the law and uniform practice of* THE CHURCH, all that the vast learning and indefatigable research of Dr. Pusey should have been able to produce is (with the exception of late Romish authorities) the (so called) Apostolic Constitutions, and two small provincial synods (the earliest of these authorities but little prior to the Council of Nice), and one Father; from which authority the *very contrary* to this law and uniform practice must be inferred. It strikes one with more than astonishment that, there being no better authorities, these should have been produced at all. Certainly there is scarcely one of the errors of Rome, condemned by our Church, which cannot be supported by stronger and fuller primitive authority than is quoted for prohibition of marriage with a deceased wife's sister.

"Not one of the first four general Councils has condemned it—has taken on itself to declare it contrary to the word of God, or to the moral law—has authoritatively decided on the question—has hinted an opinion—has entertained the question. The great Council of Nice (A.D. 325) *did* discuss the marriage of the clergy: it did *not* mention marriage with a sister-in-law. It would be vain to say that this silence of General Councils implies that such marriages were unknown. The letter of Basil,

the Canons Apostolic, the Councils of Eliberis and of Neo-Cæsarea, prove that such marriages had been contracted. And the fact remains—and it is a fact pregnant with value in the consideration of this case—that *no General Council has condemned them.**

As an objection to the measure now before Parliament, Mr. Keble insists that concession might lead to a claim to marriages of *consanguinity* Is it true, then, that in order to maintain just and necessary prohibitions we must impose unjust and unnecessary restraints? Because men seek permission where God has not forbidden must they necessarily claim it where he has?

Mr. Keble believes, that "fornication," in Acts xv. 20, 29, means marriage within the Levitical degrees. I do not stop to question it; I content myself with remarking that it avails nothing to the argument until he has proved that marriage with a deceased wife's sister is forbidden in Leviticus, and was not practised by the Jews.

That near degrees of affinity are sacred in God's sight no one denies or disputes. No one contends that every marriage of affinity is pure, as Mr. Keble insinuates, but that *some* are. What is *the just limit* is the question. If, by citing the cases of Herod and the incestuous Corinthian, Mr. Keble means to say that marriage with a sister-in-law is the "fornication" of Acts xv., he could not have produced anything less to the purpose. In *both* cases the husband was living, and the crime was *adultery*. In Herod's case, not only was his brother Philip alive, *but there was a living daughter*. Thus Herod doubly violated the Mosaic law.† In the Corinthian's case, not only was the woman his step-mother, but his father was living.‡ It is not certain whether there was any marriage in this case. Thus the Corinthian's crime was adultery with one standing to him in the place of a mother, involving a confusion of duties, and a subversion of order. What conceivable analogy is there between adultery with the wives of living men and marriage with the sister of a deceased wife?

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* Συγγένεια, p. 25.

† See Josephus, Antiq., book xviii., cap. 5.

‡ 2 Cor. vii. 12.

Mr. Keble quotes, with approbation (page 31), an argument in a violent party newspaper, "The Guardian," that "every plea which has been alleged for setting aside the Levitical degrees in this instance, is at least equally applicable to the case of the weekly day of rest." The argument may be disposed of in one line; it is indeed hardly worth the notice. A weekly day of rest is enjoined in Holy Scripture expressly, in so many words, without possibility of doubt or cavil. Marriage with a sister-in-law is no where expressly prohibited, and prohibition can be inferred only by a more than doubtful construction of Scripture.

But Mr. Keble remarks (page 20), that it is "safer and more loving towards our Lord to retain the Levitical restrictions than to annul them." But this must depend on our understanding of the will of God. God's will ascertained, that will is to be obeyed; but what that will is, is here precisely the question. It must first be clearly established that this marriage is forbidden in Leviticus. If not forbidden, it would *not* be "loving towards our Lord" to bind where He has set free, to place stumbling blocks in our brethren's way, and to present a vast temptation to a lamentable immorality, without a necessity proved and imperative.

Mr. Keble does not neglect the plea that these marriages are "socially inexpedient." But one great fallacy pervades his argument throughout. *He ascribes to a human law a power it cannot have.* He argues thus: marriage being by law prohibited, a widower and the sister of his deceased wife may reside under the same roof in safety and propriety; whereas, if marriage were permitted, such co-residence would be impossible. Such an opinion betrays but a narrow acquaintance with human nature. The view taken by the writer I quote so often is surely far more correct. "Can," he asks, "can it really be imagined that a young woman could always without impropriety and without danger reside with a youthful widower, merely because a *human law* had interposed a bar to *marriage*? To justify her residence, the bar must be of such a nature as not only to preclude the possibility of marriage, but to subdue every feeling and impulse of the heart. This *is*

the bar in the case of the sister in *blood*: it can never be such in the case of a sister-in-*law*. To talk so lightly of men being able to shape their affections, inclinations, wishes, thoughts, as the *law directs*, is to betray ignorance, or forgetfulness, of one very important portion of theology, namely, knowledge of the working of the human heart. Positive prohibitions have always proved powerless to thwart the instincts of nature:—

Naturam expelles furca, tamen usque recurret.

History tells us that the attempt has always ended in disaster. Did the enforced celibacy of the clergy insure purity of life? If, indeed, as the Bishop of London insinuates, the danger arose only from the lower and baser passions, positive prohibitions might possibly have influence. But the Bishop clearly mistakes the danger. The real danger lies deep in the best and holiest feelings of our nature,—the danger of a devoted and lasting attachment surprising two pure and affectionate hearts; a danger the more difficult to escape because coming without previous warning; a danger fearfully augmented by the existing law, which, by forbidding marriage, lulls vigilance and disarms suspicion. Admitting that the prohibition of marriage might, in some instances, give to the children an aunt's superintendence, it would at the same time make impossible to them the unspeakable benefit of that superintendence being blended with the more anxious and tender care of a mother; it would preclude them from obtaining for a step-mother one whose sympathies and affections would be strengthened by the closest ties of *blood*, to soften the harsher features of that difficult relationship. The harmony and happiness of families are deeply concerned in this point. Children would look up with a more loving regard to a step-mother who was also their aunt; brothers and sisters of half blood would entertain towards each other a more fraternal feeling when they remembered that they are children not only of the same father, but of mothers connected by family and sisterhood. The law that would deprive families of so vast an advantage would surely be a most 'inexpedient' law."*

* Συγγένεια, p. 40.

Mr. Keble argues that a law which would place the wife's sister in the same relation to the husband as any other unmarried woman, not only *might*, but *must*, in *all* cases, separate the wife's sister from the family; not only after the wife's death, *but in her lifetime also* during any long illness or absence, (p. 7). He adds, "The effect of the law while the first wife is living will be, ordinarily speaking, the loss of all her sisters, as sisters, out of the family."

With what propriety can this supposed effect be assigned to the repeal of the existing law? *Before* the passing of that law—*a law, be it remembered, of but* 13 *years' existence*—"bereaved families" tasted "the balm and comfort of sisterly affection." With what pretence, then, can it be urged that the repeal of this Act will deprive bereaved families of this undoubtedly great blessing? But the whole argument is a libel on English social life, and I believe on society and human nature. Can no woman minister to the wife during sickness, *unless the law forbids the husband to marry her*? If so, then may not his cousin perform this affectionate office, nor her cousin, nor any female friend. Or (since this outrage on common sense and common feeling cannot seriously be maintained) does Mr. Keble mean that her sister is the only female who cannot minister to the sick wife without legal protection? Is married life in England so profligate, and so *peculiar*, that sisters-in-law require a protection by *legal* prohibition which other women do not need? Do husbands see nothing in them but objects of future alliance? I trust this is not Mr. Keble's view; but if it be not, his argument is mere extravagance and childish exaggeration.

"Surely the true reason why they do not contemplate marriage is, that *during the wife's life,* there is *no place* for such a contemplation. The legal prohibition can act, if it can act at all, only by making the *contemplation* impossible because *marriage itself* is impossible. The impossibility of the contemplation arises not from this law of prohibition, bnt from a more immediate and more cogent cause—*the existence of the wife*. The man who, during the life of his wife, and uncertain whether it might not extend beyond his own, would not be restrained from such a contemplation, would be little deterred by any legal restriction. The

intercourse of the husband and the wife's sister is now as free and unrestrained as can be desirable. Before this legal prohibition it was as free and as intimate as it has been since. A law that would sanction a more unrestrained intimacy would be a misfortune, not a blessing." *

The observation that they who wish the change are "not the majority," needs but little notice. The majority can never be affected by the law. There would be some ground for the argument, if it were sought to *compel* men to marry their deceased wife's sisters: but it is proposed merely to restore the natural right to marry sisters-in-law; and it would be tyranny and injustice to refuse that right merely because the majority may not wish to avail themselves of it, or be willing to grant it to those who do.

Cousins and *Clergymen* were for ages restricted from marrying: and they undoubtedly were not the *majority* of the nation. Yet that was no impediment to the removal of an unjust restriction. This is surely not a question to be decided by a ballot of numbers: it should be determined according to the reason of the discerning few, rather than the prejudices of the uninformed majority.

Mr. Keble concludes his Tract with a threat which, for his sake and for the sake of the Church, we must hope to be without other meaning than to frighten us from giving support to the Bill now before Parliament. He says that *Communion* and *Christian burial* will be denied to parties contracting these marriages. That is to say, parties to a marriage which would be stamped with the sanction of a Christian nation, and solemnized by ministers of Christ's Church, will be denied the privilege of Holy Communion and Christian burial, because *he thinks* them condemned in Scripture, an opinion which he has vindicated by, to say the least, most doubtful arguments, and from which a large number of eminent members of his own sacred profession entirely dissent. The uncharitableness of the thought is to be equalled only by its futility. The threat cannot be carried into execution, not only because outraged law would sustain its own authority, but because the voice of public indignation would confound such an attempt to

* Συγγίνεια, p. 39.

abuse the authority which Christ has delegated. I can conceive it possible, though I hope it is not probable, that the Clergy might be called upon to resist a law at variance with Holy Scripture. I am persuaded they would cheerfully encounter bonds, and even death itself (if God so will), rather than submit to it. But then no doubt must rest upon the point. Its unscriptural character must be clear and obvious to all but the perverse and disobedient. It must not be a question on which good and learned men may, and do, greatly differ in opinion.

This threat seems to be the basis of a certain protest to which the signatures of the Clergy are eagerly invited by some bitter party journals. To every reflecting mind that protest must appear a very fearful document. It pledges the subscriber, *as in the presence of Almighty God*, to the belief that the table of degrees adopted into the Canons of 1603 contains the just exposition of the revealed will of God in this matter, and binds them, under the most awful pledges, never to sanction these marriages in any way whatever; inferring that they will refuse Communion and Christian burial to the parties, though their union shall be sanctioned by the supreme authority in the realm, and solemnized by priests who serve at the same Altar. This is to carry their animosity to these marriages beyond even Eliberis and Neo-Cæsarea. Eliberis thought five years' penance (or less, in case of sickness), sufficient expiation. Neo-Cæsarea pursued the parties with excommunication only to death or sickness. But the pious horror of these modern objectors is not to be bounded, it appears, even *by the grave*. That this unhappy document will be signed by a few men, rash and intemperate in all things, is probable. That the great body of the Clergy—the earnest, the sober, and the thoughtful—will concur in it, and deliberately cut themselves off from the *possibility of future conviction*, is not probable. They will doubtless reflect a little whether their Bishop might not be asked if there were any right or religion in refusing Communion and burial; and whether, if he should deem it rash, rebellious, and uncharitable, their solemn pledge would not be controlled by a still more solemn and more binding pledge. But one thing will be granted to me, that nothing can justify such a step

except a patient investigation of the merits of the question, and a careful and unprejudiced study of all that can be said on *both sides*. It will be no justification that we have permitted ourselves to be carried away by uncandid statements, one-sided arguments, distorted facts, and suppressed evidence. Neither can the conscience be absolved, as seems to be thought, by calmly reposing on the Canon of 1603. Those Canons never having had the sanction of King and Parliament (necessary to give them validity), have been declared by solemn judgment of the highest tribunal to have no binding force on the Laity, and on the Clergy only so far as they are willing to render them a voluntary obedience. This has been the constitution of the Church from the earliest times. Ever since there was a Christian Emperor, the decrees even of General Councils have challenged no obedience in the Church, until confirmed by him whom God had invested with supreme dominion. Within this Church and realm this is also the settled rule. The Canons, therefore, claim only a voluntary obedience:—and whilst that obedience is consequently conceded to so few—to scarcely any other of the 141—good conscience can never be constrained by this one alone to listen to no inquiry, to defy the Legislature, and to cast out of Communion brethren who do not admit a doubtful interpretation of Holy Writ.

If in this review of Mr. Keble's Tract I have been obliged at times to use language which cannot be reconciled to the unfeigned respect and admiration with which I have ever regarded him, it has not been without a feeling of pain and regret. What seemed to me a duty left me no alternative. Writers in party reviews and party journals cannot afford to be simply honest and charitable. They consider themselves privileged to colour, to suppress, to exaggerate. Much better cannot, perhaps, be expected from not a few who, mimicking the forms, the tone, and even the phraseology of Dr. Pusey and Mr. Keble, show by their general bearing how little they comprehend the devout spirit of those excellent men. But Mr. Keble himself moves in a higher sphere. His learning and virtues have invested him with the character of a guide and counsellor in the eyes of a multitude. He has come

forth to advise and to direct, and we had a right to expect from such a man candour, impartiality, and forbearance,—qualities whose absence is not well supplied by a tone of sensitive piety and religious horror. Whilst men are doubting whether a particular union is rightly called incestuous, few will be satisfied with general invectives against incest. As an argument it is worth nothing; and to those who know the history of other prohibitions, and have read in former days the same tone of outraged feeling and superfluous horror at the marriage between *cousins*, it can scarcely fail to cause a smile.

One lesson we may derive from the manner in which this argument has been conducted that cannot be too often pointed out; and it is sufficiently humiliating to us all. That lesson is, how sadly a favourite opinion, strongly dwelt upon, can dim the moral perception and impair the candour of the best of us.

But such an exposition of human infirmity is surely a powerful warning against implicit reliance on any party leaders. Can anything free us from the responsibility of wilful error, if, rather than take the trouble of particular research, we borrow our opinions from the many, or the few? Will it be any excuse, if haply we busy ourselves, with mistaken zeal and reflected uncharitableness, to *spread an erroneous cry*, that we were misled by having read *only one side* of the question? Before we act in a matter of this kind, involving the word and will of God, it is a sacred duty to test our favourite guides by a fair and candid examination of what has been said in opposition to them, and to trust them only so far as we have proved and tried them ourselves.

This observation naturally calls my attention to another incident in this controversy, which I may be pardoned for introducing here. Dr. Pusey, in his anxiety to remove the invincible objection of *the practice of the Jews*, has lately written a letter to the "Guardian Newspaper," which runs thus:—"In my evidence before Her Majesty's Commissioners I stated that the Talmudists, although they considered that the principle of forbidden marriages extended beyond the particular instances expressly understood in Leviticus, yet allowed the marriage with the wife's

sister.' Since I reprinted my evidence, an important piece of evidence has been pointed out to me, showing that the Alexandrian Jews at all events rejected these marriages before the coming of our Lord. In the Septuagint translation (as you know B.C. 277) there is, Deut. xxvii. 23, the remarkable addition, 'Cursed is he that lieth with the sister of his wife. And all the people shall say Amen.' This is of course omitted in a certain number of MSS. and of Christian versions of the LXX., because *it is an addition.* Still it is an *integral part* of the Septuagint, and so is an indication how the *Jews* understood the prohibition of Leviticus at an earlier period than the Talmudic authorities."

If this "remarkable addition" really was an "*integral part* of the Septuagint," it would by no means indicate how *the Jews* understood the prohibition of Leviticus at an earlier period than the Talmudic authorities. All it would indicate would be that the Jews of Alexandria differed from the rest of the Jews in opinion on the subject, and to give an appearance of strength to their opinion did not scruple to falsify the word of God. If it had been a thing settled and universally acquiesced in by all the Jews, that these marriages were forbidden by Leviticus, we should not have had Scripture corrupted to establish what was already established. But is it indeed "an integral part of the Septuagint?" Is that so free from doubt as to justify a learned man in making the naked statement that *it is* in a party paper? Is there not a great doubt, a great improbability, on the face of it? Is it not certain that it is a *Christian interpolation of later ages?* Our knowledge of the Septuagint is derived from such ancient MSS. as have come down to us, and from which our printed texts are taken. From the wording of Dr. Pusey's letter the unwary might be led to suppose that we possess some MS. of the Jewish translators, written nearly 300 years before the coming of our Lord. The MSS. we do possess are all written by Christian transcribers not less than 500 years after Christ, copied at the time when this and similar prohibitions were being introduced and extended in the Church. This is sufficient of itself to throw doubt upon the integrity of this verse, even if all the MSS. extant contained it. But if

one single MS. of good antiquity was found without the verse, it would, under circumstances of such suspicion, prove against all the rest whence this interpolation came. But it so happens that of our oldest and best MSS., those which are chiefly relied upon, the majority are *without* this "remarkable addition;"—which reduces it to a certainty that it never was an "integral part of the Septuagint."

The Jews had a reverence, almost superstitious, for the very lines and words of the Holy Book, all which were noted and numbered. There was nothing more abhorrent to a Jew than the notion of tampering with the sacred text. The interpolation in question is utterly at variance with Jewish notions and feeling. Interpolation by Christian copyists to favour peculiar doctrines is, on the other hand, a common source of corruption of the text. And yet we are told to believe that an admitted addition, found in two or three MS. copies made by Christians five or six hundred years after Christ, is a proof not only how the Jews understood the prohibition of Leviticus, but that seventy learned Jews conspired together to make a remarkable addition to Scripture eight hundred years before;—and did so, if Dr. Pusey's position be true, without an object or a motive.

But the absurdity of this assertion may be made more apparent still. For some centuries the Septuagint was the only version of Scripture used by the Fathers. St. Basil himself knew no other, and he was himself a corrector of its text. Yet St. Basil knew nothing of this "remarkable addition." If he had considered it an "integral part of the Septuagint," is it to be believed for a moment that he would have made no use of so convincing, so decisive an authority in his argument with Diodorus on this very question? that he, who cited and commented upon all the other texts, should be silent as to this?

We have, however, another witness, more decisive yet against the truth of this inconsiderate statement, Philo Judæus. Philo was a learned Jew, whose writings are held in great estimation for their value in Scripture interpretation. Philo lived thirty years before Christ; he lived in Alexandria, and he used the Septuagint version of Scripture. He has written in Greek on the laws of Moses; and, as we learn from Dr. Adler, Philo does not

differ in opinion from the rest of the Jews.* In Philo's days, therefore, more than five hundred years before the date of any MS. we possess, it was obviously no part of the Septuagint at all.

The custom of the Jews at this day is to allow such marriages, and to regard them with peculiar favour. With a people so obstinately adherent to their customs, their present practice is proof of their ancient rule. Their historic records of remotest antiquity bear testimony to this custom; and there is not the slightest evidence to show a deviation from it. This custom is fatal to Dr. Pusey's interpretation of Leviticus, and destroys his whole argument. I am not surprised that he should be eager to get rid of this fatal evidence. But I own I am surprised that, in the face of such cogent proof to the contrary, open to the most cursory inquirer, he should have lent his name to the unqualified and unfounded assertion that this spurious addition of a Christian of later ages was an "integral part" of the original Septuagint, or that it would be of any weight if it were such.

In concluding this examination of Mr. Keble's Tract, I will only add that for his personal character, for his virtues and talents, I entertain a deep respect. I am willing to make every allowance for strong prejudice and excited feeling, which we all need in turn; and I should be sorry to use one harsher word than the interest of truth demands: but it is impossible to shut the eyes to the fact that there is in this Tract a startling absence of fairness in the statements, much suppression of important particulars, and additions which lend a delusive colour to the arguments. For myself, I have drawn a conclusion from the study of God's holy word contrary to Mr. Keble. I make no pretension to be freer from human infirmity than other men better than myself; and I am not so bigotted in my opinion, I humbly hope, as not to be open to conviction, if it can be proved to me that I am mistaken:—but I have risen from the perusal of what Mr. Keble and Dr. Pusey have written only with increased strength of conviction—not more from what appears to me the insufficiency of their arguments, than from the want of fairness in their manner of state-

* See Report, p. 152.

ment; a want which, when it becomes apparent, necessarily awakens suspicion and destroys confidence.

We, to whom Mr. Keble's Tract is addressed, must feel ourselves to be in a position of very solemn responsibility. Mr. Keble would persuade us to raise our voices against the measure now before Parliament. I do not take upon myself to say that we may not. But I say that, before coming to any conclusion, we must ponder *well* what we are about; and faithfully employ all the means God's goodness has conferred on us—reading, thought, study—in striving to reach a safe conviction. The conclusion on which we shall resolve will have to be *justified before God.* Let us be indeed "very jealous for the Lord God," and for His holy cause: only let us look to it that it *is* for the Lord God and for His cause that we be jealous; and *not for a party, or a name.* Let us beware "lest haply" we "be found even to fight against God,"—reckoning that unclean which He has sanctified, and denouncing a marriage which He has sanctioned.

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