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REASONS

FOR

LEGALISING MARRIAGE

WITH A

DECEASED WIFE'S SISTER.

BY LORD DENMAN.

SIXTH THOUSAND.

LONDON:
HATCHARD AND SON, PICCADILLY.

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LEGAL MARRIAGE
DEDICATION

While I gratify my own feelings by inscribing this

argument to

HENRY LORD BROUGHAM AND VAUX,

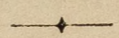
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I am conscious that I call down the severest scrutiny on its correctness. If wrong, I am perfectly ready to frankly retract my error; but if right, I trust that we may both live to witness the abrogation of an unwarrantable restraint on freedom—a thing always to be deprecated; but more especially, if it has proceeded from a misinterpretation of God's word, and affects the sacred institution of marriage.

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MARRIAGE WITH A DECEASED WIFE'S
SISTER.

BEFORE the year 1835, the law of England presented an unparalleled anomaly on the subject of marriages of this description, which were made unlawful by an Act of Henry VIII., but could only be set aside by the spiritual court, and in the lifetime of the contracting parties. The consequence was, that the same union was good or bad, the offspring illegitimate or lawful, and the wife, an honourable matron or a concubine, according to the accident of some person finding it his interest to prefer a suit in due time in the proper court for invalidating the marriage. In strict law, it was void : in effect, voidable only.

This extraordinary state of things does not appear to have attracted general attention. Probably such marriages were not frequent ; and, owing, perhaps, to the enormous expense of proceeding in the Ecclesiastical Court, few of them were impeached. But when it happened that the heir-apparent of a family of the highest rank, and of one of the most ancient peerages had, probably in ignorance of the law, formed such a union with a high-born and virtuous lady, with whom he lived in perfect harmony, and with universal respect ;

the position of such parties unavoidably excited a new interest. The result of great reflection was a proposal that the issue of this marriage as well as their parents should be relieved from their painful position, and the union itself made valid, by an *ex post facto* law. Such was the object and effect of the Bill which Lord Lyndhurst introduced.

As other families were known to be involved in the same revolting difficulty, justice and decency required that the Act of Parliament which should give validity to these interdicted nuptials, should confer the same benefit on all parties similarly situated. But it is understood that many of the learned prelates, indeed the bench of bishops generally, declined to concur in granting this boon, nor indeed could it be expected, without some general provision for the future. Two courses were open. Assuming that such marriages were not in their own nature unlawful, but had been mistakenly supposed to be forbidden by God's law, the condemnation of them by the law of man might have been reversed. On the other hand, the dispensation being confined by way of indulgence to those who had transgressed in time past, the law might still be kept in force to deter from similar acts in time to come. The latter alternative was preferred. The former anomaly was removed, and future marriages of this description were no longer to be good or bad according to uncertain events, but all such were now, for the first time, pronounced null and void, while a whole class of marriages formerly supposed to be invalid, as contrary to God's law, certainly made so by the previous law of the land, was established beyond the power of question.

Perhaps the relaxation in the particular case had

more tendency to encourage, than the new-created penalty to deter. Marriage with the sister of a deceased wife, though prohibited, became more frequent. The theological branch of the question was more freely canvassed, and the supposed prohibition was by many thought to be purely imaginary. People felt that it would have been indecorous to suppose that the bishops had consented to declare any marriage valid, which they really thought forbidden by God.

The social question was also discussed; and the general opinion of those who gave their minds to the subject was adverse to the existing law. The injustice of stigmatising the innocent children was felt to be as great under the new law as it had been under the old. Yet when, in 1842, a distinguished member of Parliament (Lord Francis Egerton, now Earl of Ellesmere) asked leave of the House of Commons to bring in a bill for the purpose of repealing it; the majority took the very unusual course of refusing even that preliminary step. Still, however, and steadily the question gained ground, and in order that a calmer and more deliberate opinion might be formed, the whole matter was submitted to commissioners of acknowledged worth, learning, and ability, who, after frequent discussions, and the examination of many witnesses, proclaimed the utter inefficacy of the Act.

The question was now again brought before the House of Commons, and that assembly, which would not even listen to a single reading of such a Bill in 1842, actually passed it, after strenuous debates, by large majorities, in two successive years. It was carried up to the House of Lords in 1850, too late, however, to allow of its being then entertained, consistently with more immediately pressing affairs.

The repeal of a law thus inefficient for its object, but capable of effecting misery to individuals, and confusion to families, was now regarded as virtually accomplished. But the further progress of the measure in the hands of its able and esteemed advocate, met with an obstacle for which nobody was prepared. The theological scruples of the voters of the Isle of Bute overruled the recommendation of the most learned men in the realm. So peremptory were their instructions to their learned and able representative, Mr. James Stuart Wortley, now the excellent Recorder of London, who had passed the Bill successfully through the House of Commons, that thereby alone he was compelled to desist from renewing his effort in another session.

The Earl of St. Germans then, on the 25th of February, 1851, originated a measure in the House of Lords, and a debate ensued on which I am about to hazard a few observations.

Of the speech that ushered in the motion, the research, the ability, and the moderation were universally admitted. I trust that these pages, may at least, cause it to be more extensively perused, confident that every unprejudiced reader will be grateful for the opportunity of making so valuable a document his own. With clearness, simplicity, and the earnestness of perfect conscientious conviction, the noble Earl set forth every branch of the argument, contending that these marriages are not prohibited by the Divine Law, and that the interdiction of them by positive enactment is impolitic, unjust, and operates injuriously on the social welfare of the community.

Of the first essay in the Lords—sixty-six, dividing against thirty-two,* and all of the Spiritual Lords present,

* This statement of numbers includes the pairs on both sides. I was

amounting to seventeen, voting against the proposal—the result seemed even more inauspicious than that in the House of Commons. But as the first decision of that body was wholly reversed by themselves, let us try whether a similar effect may not be produced by the same means in the Upper House. This can only be hoped for by a temperate examination of the grounds on which the proposal was rejected.

It must of course, be universally felt to be right, that these marriages, if prohibited by the law of God, should be declared unlawful by human authority also, even though the consequence may be the punishment and degradation of the unoffending children. And if the prelates of England had been unanimous in declaring an opinion to that effect, their authority would have borne some resemblance to that of a synod, or other ecclesiastical body exercising its proper jurisdiction. But so far was this character from attaching to the spiritual authorities arrayed against this motion, that their discrepancy is perhaps without a precedent. The excellent primate led the opposition; but the great speech which made it triumph, came from the lips of that prelate, whose condemnation of the primate for heretical opinions is too painful and notorious to be dwelt upon. The noble and learned Chief Justice of the Court of Queen's Bench was the only peer, spiritual or temporal, who supported the Bishop of Exeter in his main principle, namely, that affinity is to be regarded in the same light as consanguinity. Now, that distinguished prelate had publicly denounced the Chief Justice also for unsound theological opinions, and had laboured both in the Court where he himself presided,

ill and unable to attend, and endeavoured in vain to secure a pair so circumstanced.

and in every other Court of Westminster Hall, to reverse his judicial sentence, pronounced on oath as a Privy Councillor.

Of the seventeen prelates who voted, six only spoke. The Archbishop of Canterbury expressly declared, that the interpretation formerly given to the eighteenth verse of the eighteenth chapter of Leviticus, as a prohibition, was at least doubtful. The Bishop of St. David's said, "that it did appear to him that such marriages as the Bill was intended to legalise were not prohibited, but tacitly, by implication permitted by the words of Scripture. He was acquainted with all the interpretations which had been put upon that passage, at least, with all those which had been brought forward during the present discussion; and his impression was that they indicated a very strong desire to accommodate the construction of the Scriptures to a preconceived opinion, and that if such preconceived opinion had not existed, such a construction would never have been adopted." The Bishop of Norwich "could not bring himself to understand the passages cited from the Old Testament, as prohibiting the marriage of a man with his deceased wife's sister." The Bishop of London admitted that his own views had undergone some change; but if any thing, he was *more inclined* to regard this marriage as forbidden by Scripture, than he had been.* Of the eleven bishops who gave a silent vote, some were well known to have published their opinion, that such marriages are not prohibited by Scripture.

Eleven of the learned Prelates were absent from the

* Perhaps his Lordship would have spoken with more effect, if he had pointed his argument to an extremely able pamphlet, entitled *Συγγενεια*, which contains an argumentative remonstrance against his own doctrine, and that of the Rev. Dr. Pusey, on the question.

debate—the Bishop of Lichfield, one of the commissioners who signed the report, virtually recommending the repeal; the Primate of Ireland, Archbishop Whately, whose admirable letter, discussing the question in all its aspects, has long been before the public, in accordance with the opinion of his late friend and instructor, Bishop Copleston. Some others, who were absent, had expressed the same sentiments. We are surely then at liberty, without any want of respect to these learned persons, freely to examine the grounds on which their several opinions appear to have been formed.

The asserted prohibition was long supposed to be contained in the verse cited above (Lev. xviii. 18). Now that verse, rendered in our received translation, forbids the bringing in the wife's sister *in her lifetime*,—*to vex her*, and seems rather to imply a sanction than a prohibition of such marriage after the wife's death. And notwithstanding the prevailing opinion, the Bishop of Exeter so plainly saw its inconsistency with that verse so translated, that he questioned the accuracy of our version, referring to the Hebrew professors, both of Oxford and Cambridge. Both had stated to his lordship that the Hebrew words represented by "to vex *her*" ought in strictness to have been rendered more generally "for annoyance," and that for "in *her* lifetime," we ought to have been taught to read "in life;" a phrase capable of expressing only more intensely any prohibition. I do not understand, however, that the "annoyance" can be supposed to be that of any other than the wife; or that the words "in life," though sometimes employed only as intensifying the subject, may not here have the application given in our Bible. Indeed neither of these learned interpreters of the Hebrew idiom appear

to have surmised that the restriction of the Bible translation to the lifetime of the wife is not the fair construction of the passage according to that idiom. Nor does any one of the Rev. Prelates, not even the Bishop of Exeter, in terms impugn the substantial fidelity of our translation.

But our learned and most Reverend Primate, to whose candour, moderation, and forbearance, the public pays willing deference, suggests that these marriages, though not prohibited, as had been commonly supposed, by the eighteenth verse, may be prohibited by indirect implication from the sixteenth. For his Grace observes, "that the case of a wife's sister must fall within the same principle as that of a brother's wife, which is forbidden in express language."

Without carrying to its full extent the resemblance between a deceased wife's sister and a deceased brother's wife, whom the surviving brother is *expressly enjoined* to marry, and thus perplexing the argument by conflicting analogies, I submit to the most Reverend Primate, that all argument from analogy is here misplaced and inadmissible. I venture to lay it down as a clear principle that the interpreters of any code must look to itself for its meaning, and if that be clear, there is no room for conjecture or speculation. But bowing to Divine authority, from which this code of marriage emanated, and finding certain cases enumerated, to which a prohibition is attached, while certain others, which must have been in contemplation, are not thereby prohibited—can we be justified in seeking either to extend or contract the positive enactment by inferences and implications which have no other warrant than human opinion, however exalted?

When his Grace refers to Paley's doctrine, that we should obey the precept, which is clear, and not be induced to think that we may disregard it safely, because not repeated in some passage of Scripture where we might expect to find it, I cannot but remember that Paley's advice is offered to the casuist, not to the legislator; that it addresses the conscience, and seeks to regulate the conduct of individuals, not to recommend the imposition of penalties with which they may be visited by the secular law. And that venerated name reminds me of the constant appeal made in his Moral Philosophy to the word of God, as the only rule of action. The doubt whether more may not have been meant than is expressed in the sixteenth verse, was neither adopted in the debate by the Bishop of Exeter, nor by any other prelate; while it is positively denied by the Bishop of St. Davids, and seems to have been refuted by conclusive reasoning on the part of the Bishop of Norwich.

The highly-favoured nation, to which the Divine Lawgiver vouchsafed in its own language to impart a code of marriage, must at least have understood the enactments, however perversely prone to infringe them. We know, from the information of their high-priest, Dr. Adler, that marriage with a deceased wife's sister, was held lawful and constantly practised among the Jews, and I believe that the numerous and awful denunciations of successive prophets, do not once speak of this union among the backslidings of the people.

The general object of the prohibition was said to be to prevent among the Jews such marriages as had been contracted among the sinful Canaanites. If so, we look in vain for proof that such marriages had ever been contracted in the land of Canaan, while we know that

marriage with a brother's widow continued after the promulgation of the Levitical law,* to be practised in Israel, as marriage with a wife's sister had been before, even by the patriarch who gave his own name to the chosen race.†

One argument, deserving notice for its originality, seeks to infer the prohibition from the condemnation which, on one occasion, is surmised to have followed its infraction. I speak of the rebuke administered to King Herod by John the Baptist, who thereby lost his liberty, and ultimately his life. The offence for which the King was rebuked, is described by three of the Evangelists. "For Herod had laid hold on John, and bound him, and put him in prison, for Herodias' sake, his brother Philip's *wife*, for John said unto him, it is not lawful for thee to have her." (St. Matt. xiv. 3, 4). "Herod, the tetrarch, being reproved by him for Herodias, his brother Philip's *wife*." (St. Luke iii. 19.) "Herod had laid hold upon John, and bound him in prison for Herodias' sake, his brother Philip's *wife*, for he had married her. For John had said unto Herod, it is not lawful for thee to have thy brother's *wife*." (St. Mark vi. 17, 18). The fact is not recorded by St. John.

The Bishop of Exeter proceeded to argue from other sources of information, that Philip was dead before his brother took Herodias. I cannot boast of any acquaintance with the state of that family, but really cannot persuade myself, even on such high authority, that John the Baptist and the Evangelists,

* 1 Ruth, xi.

† Gen. xxix. 28. But an argument appears to have been lately insinuated out of the fact that Polygamy was permitted to the Hebrews. I must see this argument developed and applied, before I attempt to deal with it.

were not fully aware of the important differences between a wife and a widow. Nor can I believe that, if they had intended to brand as sin, what would otherwise appear to be lawful, they would not have pointed this single anathema more distinctly against it. But after all, indeed, the case is that of a brother's wife, not a wife's sister, and can furnish no argument but from that reasoning from analogy against the admissibility of which I contend. Moreover, if Herod had only succeeded to a deceased's brother's widow, his doing so might, perhaps, *had there been no issue*, be justified as a compliance with the Divine command in Deuteronomy xxv. 5, recognised in St. Matt. xxii., St. Mark xii., St. Luke xx.*

If a layman may, without presumption, take part in this controversy, and adopt the conclusion arrived at by the Bishops of St. David's and Norwich, that marriage with a deceased wife's sister is not only not prohibited but permitted by the Divine law—not through negligence, as too frequently happens in the best essays of human legislation, but studiously and of purpose—some weighty consequences arise from such a conclusion. Can human authority be justified in nullifying a marriage contracted under such a sanction, and putting asunder those who are united with such approbation?

They to whom the negative appears the only logical conclusion will be further led to infer some reason for omitting marriage with a deceased wife's sister from the prohibited catalogue. And such reason they will probably think they discern: for, in some cases, such

* It appears, however, from Josephus, that Philip was living, and that a deliberate contract was made for the transfer of his wife. The whole history is given in the 18th book of the Antiquities. Adultery may surely have furnished the Baptist with an adequate motive for his rebuke.

marriages would be peculiarly conducive to the union and happiness of families. Omniscience must have foreseen that, in the complicated affairs of life opportunity and inducement to such unions would frequently arise, and most frequently in the humbler classes. There they are often found the inevitable alternative to rescue from a life of scandal and vice. It may almost be said, that to many, to whom such a marriage is not permitted, concubinage is enjoined. We must submit without a murmur to this mysterious dispensation, if the prohibition exist; but if we agree in thinking that there is no such prohibition in Scripture, how can we defend an Act of Parliament which creates it?

A virtuous young man has had the irreparable misfortune of losing his wife, the mother of his children. Unequal to undertake the pilgrimage of chaste widowhood during all his remaining years on earth, he finds that he can at once gratify his natural feelings, and provide both the most agreeable companion for himself, and the best guardian for his children, by a union with her who most resembles the object of his youthful affection, and who, from long acquaintance, cherishes the liveliest sentiments of respect and confidence for him, and now feels that she can return a tenderer attachment. The law imposes a veto, because the human lawgiver imagines evil consequences to society which the Divine lawgiver, who benignantly framed a code for the good of society, did not foresee. Can this law be vindicated by its own severe provisions? Is it enough to say to these parties, "You knew the law, and should have taken care not to form this mutual attachment? You should have looked elsewhere for an eligible matrimonial connexion; there are men and women enough in the world to choose from." I believe

this has been said; but I hope by no bishop, I am sure not openly in his place in Parliament.* There the law, though by many confessed to have had its origin in a mistake, is still defended and maintained for the happy but accidental effect ascribed to it, of preventing great moral and social evils.

In the absence of all definite evidence to prove this, or indeed of any definite statement what the evils are supposed to be, Lord Campbell, boasting, amid loud cheers, the extreme purity of practical morality in England, gave a solemn warning against touching the law under which so happy a state of morals had flourished. Generally speaking, this complacent vein of self-laudation, which always finds an assenting audience, in the highest as well as the lowest assemblies, is resorted to as an obstacle to useful and expedient alterations. The eulogy, if deserved, has probably been earned by the judicious abandonment of old errors and the amendment of bad laws. General excellence is rather a reason for removing than preserving particular defects. The elegance and commodiousness of a house are no arguments for tolerating a partial nuisance to some of the inhabitants—at least till the bad qualities are shown to be inseparable from the merits.

But, I am prompted to ask the invidious question, are we so very sure of the truth of this flattering announcement? Have we this reason to thank heaven that we are "not like other men?" to believe that "we are righteous," and may "despise others." Of those others we perhaps do not know enough to ground

* The generous indulgence that permits marriage with any of the opposite sex, except the only one on whom the affections are fixed, may be compared to that of the trader in "Uncle Tom's Cabin," who consoles the separated wife by promising that he will have no difficulty in finding her another husband "down south."

a comparison ; we may know something of ourselves if our eyes and ears are open. Now in the House of Lords, when this sweeping contrast was drawn so greatly to our advantage, several divorce bills, then pending, gave some indications of the state of morals in England. One of those disclosed peculiar treachery in friendship, another was required by a criminal connexion between a brother and a sister. Within a week of the time when Lord Campbell uttered the boast, his duty called him to preside at the criminal assize for the county of Essex, where the mass of atrocious crime was so enormous as to extort an expression of horror from his lordship. He even publicly declared a doubt whether he could bear any longer to retain his high office, charged with such revolting duties.* I fear that the increased experience of the Chief Justice, as well as the report of other circuits made by his learned brethren, has had but little tendency to correct his estimate. But I do not remember that any one of the notorious crimes engendered by sexual immorality and conjugal infidelity, can be traced to a marriage with a deceased wife's sister.

The reason of the apprehensions felt is not easily ascertained. Two supposed evils have been brought to my knowledge. The cessation of that "innocent familiarity" between the husband and the wife's sister in her lifetime, which the possibility of their marriage after her death might prevent, is one of these evils. But I venture to think that the danger is no greater in this case than in many others constantly recurring in domestic life ; that innocent familiarity may exist without a thought of marriage, and that that familiarity

* In a charge to the Grand Jury of Sussex, March, 1851.

cannot well be innocent if practised towards a sister-in-law, which would not be permitted towards any other female friend of the wife.

The other evil is one which cannot occur till after the wife's decease. Then, it is said, the desirable object of the children's education being attended by their aunt and most natural guardian, will be defeated by the impossibility of her living in the same house, if subsequently they may become man and wife. I respectfully ask why this should be ? Any chance of the widower becoming the lady's husband, would obviously give him an additional motive for preserving her virtue and purity. But who could encounter the suspicion and the scandal ? The answer is, that both have been braved, in our own time, by persons of eminent station and signal virtue, but neither has been found to have any real existence. The suspicion will hardly be felt, unless by those whose own very lax morality may make such conduct venial in their eyes ; and when will legislation end, if it is to enter the lists with scandal ?

An objection still more vague is, that the present question is a "woman's question," and has been already decided by the fair sex : so very vague, indeed, that to deal with it appears scarcely possible. But the assertion has passed current, and has certainly had weight with many. A noble judge, and one of the Right Reverend prelates, assured the House of Lords, that 99 out of every 100 of the female population of our country, are averse to a repeal of the prohibition. Yet I am at a loss to understand why this is called a woman's question, since a woman possesses no exclusive means of judging, nor any exclusive interest in the decision. But has the opinion been, in fact,

formed? Has the deliberative college been summoned, and what are the qualifications, and the age for voting? On what points has their opinion been taken, and by whom?

The fathers of families must be supposed to have collected the votes of spinsters, at least the younger portion of them, the husbands of their wives. The former class can hardly be supposed to object to the union, on the ground of affinity, from Lord Campbell's mysterious intimation as to the words, "one flesh." Yet no other ground for their vote appears. The wives will be less prone, perhaps, to enter on the discussion, than to wonder at hearing such a question propounded. It will be much more interesting for Mrs. A., to enquire why Mr. A. has been thinking of her death, and his possibly choosing her sister, Miss B., to supply her place, than to regulate the destinies of the unknown families of all the X.'s and Y.'s in the world. The college of wives may express unanimous horror at the thought; but who shall say that the suggestion of any second marriage would not be equally distasteful, or that the abhorrence is not entirely owing to the old inference from Lev. xviii. 18? The remaining class, the spinsters more advanced in life, with no partiality to marriage in general, are sometimes supposed to acquire a spirit of censoriousness, which may lead their minds to multiply restrictions upon others.

The assumed majority of 99,* is said, however, to

* I was disposed to fear that I had enlarged too much on an assumption so vague, and so purely gratuitous; but I observe, from a late debate in the House of Lords, that this preponderance of female opinion is still made the great argument against the repeal. On that occasion, however, the majority of 100 to 1, was generously dropped to 9 to 1; for there is as much proof of the former numbers as the latter.

have decided this question, from an "instinctive feeling of propriety." Every one would respect the lady, who, from any genuine scruples, should decline for herself the comforts and advantages of a desirable alliance; but I find nothing respectable in her conduct, who would impose her own instinct as an obligation upon others, by the visitation of cruel penalties, and condemns to shame and obloquy not only the wife, who wants her instinct, but the unoffending progeny of a union, which the parties to it firmly believe to be sanctioned by the Divine will.

That marriage with a deceased wife's sister is a common cause of much practical evil, I find some difficulty in believing, when it appears to be the marriage held most honourable among the Hebrews, and most respected where it is best known. The continental nations, which have experience of its effect, are not aware of such mischief, and the testimony of Bishops and judges in the North American States is strong in its favour. It is abhorred, indeed, in Scotland and in Ireland, as we are gravely informed; and if so, a penal Act can hardly be required for those parts of the United Kingdom. But how strange that the ill consequences of a practice should be unknown where it exists, and assumed as certain there only where it is not practised, and here where it is prohibited by law. Still stranger, that the obvious disadvantage under which it labours from this prohibition, has not the effect of exciting any general feeling of antipathy or aversion, though calculated in individual cases to create much misery.

But we are here arrested for a moment by the same difficulty that has arisen on every matter of fact urged in support of the existing law. It is irksome to

repeat so often the unmannerly question, "Is the statement true?" For this assertion, boldly made by some who ought to know, can by no means be admitted. Of public opinion on this point in Ireland, I have no means of judging; yet the present Archbishop of Dublin and the late Bishop of Meath must be allowed to form an important deduction from universality; while in Scotland the authority of the late Dr. Chalmers—scarcely, if at all, inferior to that of any divine of any age or sect in that country—denies the supposed prohibition; and petitions for the repeal of the Act have been presented to Parliament signed by many thousands of the inhabitants of both Edinburgh and Glasgow.

On the supposed social evils, we have important evidence at home from the parochial clergy of the capital, and many other populous places. Some of the most eminent unite in recommending the repeal of the prohibition. They do not rest their opinion on authority but support it by excellent reasons, and by pointing to undoubted evils that grow out of the law.

I must by no means forget the single bishop who supported Lord St. Germans' motion, though sitting and voting as a temporal peer in right of his barony of Auckland. Before his promotion to the see of Sodor and Man, his Lordship was well known as one of the most benevolent, judicious, and exemplary of parish priests; in which character he learned more of the wants and habits of his flock, than a twenty years' episcopate would have taught.

No other set of men knows so much of the domestic relations of social life in England as solicitors; and nearly the whole of that influential body residing in

London, has joined in a petition to both Houses of Parliament for the repeal. They feel themselves placed, of late, in a new difficulty, suggested by learned lawyers of the first eminence, who are known to feel a serious doubt whether the present law is not so worded as to have no effect on marriages contracted abroad. When this question is brought judicially before the House of Lords, the result either way will be but little honourable to the wisdom of British legislation. If marriages solemnised in foreign countries are held good, every man who can afford to pay his passage to Hamburg or Copenhagen will be free to go there and marry his deceased wife's sister; and the law will exhibit another of those disparities in its dealing with rich and poor, which are its greatest scandal and justest reproach, and are ever engendering distrust and discontent in the governed. But if such foreign marriages also, shall be held null and void, the present practice will continue notwithstanding. Widowers will still marry their sisters-in-law, when both parties are convinced that their union is not prohibited in Holy Writ. They will, as heretofore, brave ecclesiastical censure fulminated against themselves, and will protect the temporal interests of their children from the effect of an oppressive law, by settling their property.

The variety of reasons assigned in debate for the vote of February 25, 1851, looks more like the tenacity with which a long current opinion is adhered to than a conviction of its justice, indicating (as the Bishop of St. David's happily expresses himself, on the various constructions of the verse in Leviticus,) a very strong desire to accommodate to a preconceived opinion, without which preconceived opinion they never would have been adopted. In these days, indeed, the most

devoted son of the Church does not openly and in terms maintain its infallibility, but the most liberal Churchman is loth to retract a specific error when expressly pointed out. Even those who confess it love to veil their confession in a cloud of mystery, which obscures the question, and so has the effect of keeping alive in the vulgar mind the fallacy which their own more enlightened reason has detected. They apprehend that truth will be a loser not a gainer, by being divorced from falsehood; and I doubt not similar fears haunted many when the Act of Parliament repealed the enactment which made witchcraft a crime punishable with death. Thus some have thought the doctrine of the immortality of the soul placed in danger by detecting the imposture of the Cock Lane Ghost.

If they who descry and pity these errors will persist in keeping them alive, by maintaining the laws to which they gave birth, can their acquiescence deserve any better description than that of pious frauds? Perhaps a worse; for the epithet could hardly be permitted to such as treat with respect a delusive interpretation of the word of God, for the protection of a mere human theory.

May I here express the real regret with which I observed one of the arguments used by that liberal and distinguished prelate, the Bishop of St. David's? His lordship is reported to have addressed an exhortation to the House of Lords that they would reject the repeal of a law complained of as unjust and cruel, and which he admits to be unsanctioned by God, because the sufferers by it, and their advocates, were too importunate, too vehement, too eager in their efforts to procure relief—an alarming argument; for it must always be strong in proportion as the grievance is intolerable; an argument

often employed against Wilberforce and his coadjutors in their endeavours to put down the execrable traffic in human beings, and in defence of those unchristian laws against all who in matters of religion differ from the majority of their fellow-subjects, which fanaticism has at all times most fondly cherished.

The early Church, we are assured, prohibited marriage with a deceased wife's sister: not the primitive Church, but certain councils of respectable antiquity. But as these ancient authorities appear to have condemned with equal severity other marriages now universally held lawful, the argument from this interdiction fails, from the common fault of proving too much. History informs us that some devout members of these venerable councils were ascetics, who condemned all the pleasures of the world as unlawful and vicious, and were ready to denounce all marriage; while others, ambitious and fond of power, eagerly sought to increase it by multiplying restrictions, and the sale of dispensations and indulgences, for which they produced so many occasions. Shortly before the Reformation, the Roman Catholic Church in Scotland proscribed all marriages within the eighth degree of consanguinity. This topic need not be pressed, if it has already been made out that marriage with a deceased wife's sister is permitted, not prohibited by the Levitical law; since no one has yet gone quite so far as to contend, I believe, that the authority of the Church is paramount to that of Scripture, and ought to prevail in opposition to it.

The only remaining argument in favour of continuing the law may be soon disposed of. It rests on the supposed *expediency* of abiding by it, rather than introducing uncertainty by alteration. It wishes the line, wherever drawn, to remain unvaried, and particularly

that the question settled by the "overwhelming majority" of the Lords, in February, 1851, should never be stirred again. It rests on the speculation that despairing of a change, all persons will conform to the existing law, contract no such engagements, and even subdue all such feelings as might lead to their being formed. Such an expectation evidently had considerable influence on the late division in the Lords. I cannot doubt that it was entertained by Lord Lyndhurst, when he consented to pass the Act in its present form. It is the principle of many chapters in our Criminal Code, which created capital punishments, with no view of ever inflicting them, but in the confidence that the threat alone would deter from the commission of, and extinguish, the offence.

Experience, however, proves that a line incorrectly drawn, in reference to subjects which deeply interest the feelings of men, will not long remain unvaried; that a question settled on a wrong principle, is never settled permanently; and that a majority which overwhelms by numbers, while it leaves the reason unaffected, sows the seeds of discontent, and prepares the way for renewed, persevering, and more successful inroads. If, indeed, the experiment which aimed at suppressing the practice had answered, if the prohibition had *put down* these marriages, though much doubt might have been felt whether such an employment of authority could be justified on principles of morality, few might have been willing to disturb what had appeared to be placed by the fact itself beyond the reach of controversy. But if the Act has notoriously failed in its operation, if these marriages, though discountenanced by the legislature, have become more numerous, not only among the lower classes, a large proportion of whom must ever remain

ignorant of the existence of this and similar interference by law with freedom; but among the cultivated, the thoughtful, the conscientious, the exemplary; if the stigma set by the law is not stamped by the public opinion; if the offenders are as well received as before, and are even respected for acting on a just view of Scriptural texts, perverted by erroneous interpretation; in such case it will surely be more politic to make the law consistent with reason, than to persevere in a fruitless endeavour to bend reason to arbitrary law, to vex and persecute where we cannot prevent, to "curse whom the Lord has not cursed, and defy whom He has not defied."

2

MARRIAGES BILL.

SPEECHES

OF

THE EARL OF ST. GERMANS

AND

VISCOUNT GAGE,

IN THE HOUSE OF LORDS,

Tuesday, February 25, 1851.

PRINTED FOR THE

Marriage Law Reform Association,

INSTITUTED 15TH JANUARY, 1851,

*For the exclusive object of Promoting the Repeal of the Act which renders void
Marriage with a Deceased Wife's Sister.*

COMMITTEE ROOM — 26, PARLIAMENT STREET, WESTMINSTER.

LONDON:

JAMES MADDEN, 8, LEADENHALL STREET.

1851.

MARRIAGES BILL
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SPEECHES

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VISCOUNT GAGE

IN THE HOUSE OF LORDS

Weekly Review of 1851

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1851

SPEECHES.

THE EARL OF ST. GERMANS.

MY LORDS,—Not long before the close of the last Session of Parliament, a Bill was brought up to this House from the other House of Parliament to alter and amend the Act passed in the 5th & 6th year of the reign of William IV., which relates to marriages within certain degrees of affinity.

Of that Bill I reluctantly took charge; I say reluctantly, not because I entertained any doubt of the policy or propriety of the measure, but because I felt conscious of my own incompetence to deal with the legal and theological questions necessarily involved in the discussion of it. It was at the request of many persons deeply interested in the success of the measure that I took charge of the Bill. It was in deference to the opinion of several of your Lordships, who thought that so important a question ought not to be discussed at so late a period of the Session, that I withdrew it. In withdrawing it I apprised the House that the subject would be brought under their consideration early in the next, that is to say, in the present Session of Parliament.

I was then in hopes that my noble friend, Lord Ellesmere, would have been here to make the Motion which I am about to make, and to address your Lordships in support of it with all the eloquence and all the ability which characterise his speeches. Disappointed in this expectation, I have thought it right not to shrink from the performance of the task; and I have now to solicit your Lordships' indulgence while I state as clearly and concisely as I can the arguments by which I hope to satisfy you that you ought not to reject this Motion. Those arguments will doubtless be familiar to most of your Lordships. Many learned and able men have written and spoken on this subject; I, therefore, cannot hope to say anything new on this

occasion, or to do more than lay before you in an imperfect form the result of the researches and of the inquiries of others.

I shall endeavour to show that the marriages which it is sought to legalize are not forbidden by the word of God; that they are not contrary to the law of nature (and by the law of nature, I mean those rules of conduct which God has enabled man to discover by the light of reason with which he has endowed him); and that they are not inconsistent with the interests of society. I might in the first place argue that the marriage law of the Jews is not binding on those who live under the Christian dispensation. That is a view sustained by authority of no mean weight. Bishop Jeremy Taylor says (*Works*, vol. xii.)—

“But the next inquiry concerning an instance in the judicial law is yet of greater concernment; for all those degrees in which Moses’ law hath forbidden marriages are supposed by very many now a days that they are still to be observed with the same distance and sacredness, affirming, because it was a law of God with the appendage of severe penalties to the transgressors, it does still oblige us Christians. This question was strangely tossed up and down upon the occasion of Henry the Eighth’s divorce from Queen Catherine, the relict of his brother Prince Arthur; and, according as the interest of Princes uses to do, it very much employed and divided the pens of learned men who, upon that occasion, gave too great testimony with how great weaknesses men that have a bias to determine questions, and with how great force a King that is rich and powerful can make his own determinations. For though Christendom was then much divided, yet before, there was almost a general consent upon this proposition, that the Levitical degrees do not by any law of God bind Christians to their observations. I know of but one Schoolman that dissents.”

I find that eminent Judge, Chief Justice Vaughan, holding this language on this question (*Harrison v. Burwell*, Vaughan, 228):—

“The Levitical prohibitions are no general law, but particular to the Israelites. As they were delivered to the Jews only by Moses, they bind other nations no more than other laws of the Jews do, as the laws of succession, and inheriting land or goods.

“They then must be made obligative, if at all, to the generality of Christians by the New Testament; but by what medium can that be proved?”

“Were it not for the Statutes it would be hard to make out by persons, of what learning soever, that we are obliged by the Levitical degrees; for we are not bound by the Judaical law; and how comes this part to be distinguished from the rest? I mean those of the Levitical degrees which are of the Judaical positive law only.”—[2 Ventris, 16.]

A much-respected clergyman of the Church of England has recently expressed an opinion to the same effect. The Rev. James Endell Tyler, in the evidence which he gave before the Marriage Commission, says (*App.* 110)—

“Now, I humbly conceive that the law of marriage, at all events as to the subject-matter of the present inquiry, is part and parcel of the political

or municipal branch of the inspired law of the Mosaic dispensation; consequently, I infer that whatever be the interpretation finally affixed to those passages considered to bear on this subject, the passages leave the Legislature of this country at perfect liberty to make such enactments on the question put to me as shall seem best to consult the religious, moral, and social interests of the community at large.”

I own, my Lords, that I incline to this opinion; but I am willing to assume that the Jewish law of marriage is binding on Christians. Let us see what that law was.

Some learned men have held that the phrase, “uncovering her nakedness,” signifies illicit intercourse, and not marriage. Mr. Fry, in a learned treatise, called *The Case of Marriages between near Kindred particularly considered*—a treatise which the pious John Wesley thought conclusive on this point, says—

“I have examined the Holy Scriptures with all the care and impartiality I am capable of with relation to this point, and I think I may venture safely to affirm that the phrase, ‘uncover her nakedness,’ is never once used in Scripture for marriage, nor yet for the lawful use of the marriage-bed, but a phrase quite contrary to it is there used in that sense, namely, spreading a skirt or garment over a woman and covering her nakedness. * * * * *

“On the whole, it is plain that, for a man to spread his skirt over a woman, and to cover her nakedness, in the Scripture phrase, signifies the same as to marry her, as has been observed by many learned commentators (Dr. Hammond, Mr. Poole, Bishop Patrick, Mr. Pyle, and others).

“And to uncover her nakedness is the reverse of it, and is put for something that is a cause for breaking or dissolving of marriage; and, when it is used for carnal knowledge, always (if I mistake not) adultery or fornication is to be understood by it.”

I shall not, however, insist on this view of the case, but will assume that marriage is intended by the phrase in question.

I proceed, then, to the consideration of the 18th and 20th chapters of Leviticus, which contain the whole marriage code delivered by Moses to the Jews, excepting the injunction in Deuteronomy, chap. xxv. ver. 5—10, directing the brother of a man dying childless to marry his widow.

The 18th chapter opens by a declaration of the will of God, that the Israelites shall not do after the doings of the Egyptians, or after the doings of the Canaanites.

It proceeds (ver. 6) to prohibit the uncovering of nakedness in certain cases. First, in that of near kindred. The full meaning of the original is said not to be conveyed by these words. Mr. Fry says, that the Hebrew words signify one that is flesh of the same flesh; and he quotes Bishop Kidder and Bishop Patrick, who think that they should be rendered “remainder of his flesh.” Dr. Pusey’s translation of them is “flesh of his flesh.” The old English Bibles, viz. Tindal’s, Matthew’s, and the great Bible, give “nearest kindred;” in short, all Hebrew scholars admit that very near kindred only is here spoken of.

In the 21st chapter of Leviticus and the 2nd verse, we find the term, "his kin that is near unto him," thus defined, "his mother, and his father, and his son, and his daughter, and his sister, a virgin that is nigh unto him."

Other cases, in which marriage is unlawful, are then specified.

In the 18th and 20th chapters of Leviticus, 16 degrees of relationship are enumerated within which marriage may not be contracted—8 of consanguinity, 8 of affinity. In the table of prohibited degrees, which has now force of law, 30 degrees are enumerated. Whence this discrepancy? My Lords, Archbishop Parker, who framed this table, and the Convocation of 1603, by which it was adopted, chose to consider that, by parity of reasoning, marriage is forbidden where there is parity of degree. They, therefore, held that, because a man may not marry his brother's widow, he is not at liberty to marry his wife's sister. It is to be observed, first, that, in Deuteronomy, chap. xxv. ver. 5—10, the brother of a man dying childless, is specially enjoined to marry the widow, "to build up his brother's house;" and that, if the doctrine of parity of reasoning be admitted, the husband of a woman dying childless is bound to marry his sister.

It is further to be remembered, that parity of degree is here assumed to exist. A man stands in the same relation, it is said, to his deceased wife's sister as that in which he stands to the widow of his deceased brother. Is this so? Does a man by marriage contract a sort of consanguinity with his wife? Divorce was permitted in the case of adultery, even by the Divine Founder of our religion. Surely the divorce which enabled a man to marry another woman, dissolved the relationship between them; will it be contended that relationship subsisted between the man and his first wife's relations after it had ceased to exist between him and her? And if divorce dissolved the connexion, surely death dissolved it equally.

A case is put by Mr. Brown Westhead, in an able pamphlet on this question:—

"A. and B. are brothers, C. and D. are sisters. A. desires to marry C., and B. to marry D.; but if A. marry C., and if affinity and consanguinity are equivalent, then C. having become the wife of A., she has become also the sister of B. It is plain, therefore, that B. may not marry D.; for she is the sister of his brother A., and necessarily B.'s sister."

He offers another illustration of the unsoundness of this doctrine in the following example of its necessary consequence:—

"John, a widower, is the father of William; Anne, a widow, is the mother of Jane. John marries Anne. If consanguinity and affinity are identical, William and Jane have become brother and sister; for John and

Anne having become one flesh, Anne has become the mother of William, and John has become the father of Jane. But there is no clause in the 18th chapter of Leviticus, nor in the table of prohibited degrees, which forbids the marriage of William with Jane."

Hence, it follows that, if consanguinity and affinity are held to be the same, the table of prohibited degrees must be extended.

I have said that 16 degrees of relationship are specified in the 18th chapter of Leviticus, within which marriage may not be contracted. The same degrees are again specified without variation in the 20th chapter, which awards a particular punishment to transgressors of each command; in some cases condemning the transgressors to death; in others, declaring that they shall bear their iniquity; while, in that of the man who takes his brother's wife, it is only said, that, "they shall be childless."

I may here observe, that the learned Michaelis in his *Commentaries on the Laws of Moses*, says, that this is not to be understood literally, but as a command that the transgressors of this ordinance shall be deprived of the honours of paternity, and that the children born of this marriage shall not be accounted his, but his brother's. Is it reasonable to suppose that Moses would have left the chosen people to infer by a process of logical deduction what marriages were, and what were not lawful? Milman, in his *History of the Jews*, tells us, that the prohibited degrees were specified with "singular minuteness." Marriage in one degree is prohibited in three distinct cases: with the sister of the full blood; with the sister by the same father; with the sister by the same mother. In another degree it is prohibited in four cases: with the son's daughter; with the daughter's daughter; with the wife's son's daughter; with the wife's daughter's daughter. Marriage is also forbidden first with the father's sister, and then with the mother's sister. Why specify all these cases? If the doctrine of parity of reason be admitted, the specifying of each of these cases would have been wholly unnecessary. Again, is it not to be presumed, that if these particular degrees were mentioned only as indicating a class, there would have been some difference between those mentioned in the eighteenth and those mentioned in the twentieth chapters of Leviticus?

Michaelis has stated many reasons founded on the manners and customs of oriental nations, and especially on those of the Jews, why there should have been a wide difference made between the case of one degree of relationship and that of another apparently corresponding to it. But as these reasons, however probable, can only be looked on as conjectural, I will not detail them.

The marriage law which we are considering is a prohibitory law, and prohibitory laws must be construed without any latitude of interpretation. What is not forbidden is permitted.

But, my Lords, this is not all. We have the 18th verse to guide us in this matter: "Thou shalt not take a wife to her sister, to vex her, to uncover her nakedness, beside the other, in her lifetime." Can words be plainer?

The accuracy of the translation is denied by very few. Every known version of the Scripture, the Vulgate, the Syriac, the Chaldee, I am assured, agree in thus rendering this verse. Michaelis, Bishop Kidder, Calmet, Dr. M'Caul, Mr. Goodhart, Dr. Eadie, Professor Lee, and many other Hebrew scholars, have borne testimony to the correctness of this translation. The verse then clearly prohibited the Jews from marrying the sister of a wife only during the wife's life, and left them free to contract such a marriage after the wife's death, when the reason for the prohibition had ceased to be in force. Chief Justice Vaughan says, on this point—

"A man is prohibited by the 28th Henry VIII. and by the received interpretation of the Levitical degrees, absolutely to marry his wife's sister; but 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 lifetime; after he might. This is a knot not perhaps 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."

The Jews themselves never considered marriage with a deceased wife's sister unlawful. For this we have the authority of Michaelis, who says (p. 119)—

"Marriage with a deceased wife's sister, he (Moses) permits, but prohibits on the other hand the marrying of two sisters at once. The words of the law, Leviticus xviii. 18, are very clear, 'Thou shalt not take a wife to her sister, to vex her, to uncover her nakedness, besides the other, in her lifetime.' After so distinct a definition of his meaning, and the three limitations added: 1. As to the one being the other's rival (to express which, we may observe by the way that the same word is used, as in 1 Sam. i. 6, where two wives had but one husband); 2. As to the man's uncovering the nakedness of both; and, 3. As to the doing so in the lifetime of the first: I cannot comprehend how it should ever have been imagined that Moses also prohibited marriage with a deceased wife's sister—that very connexion which we so often find a dying wife entreating her husband to form, because she can entertain the best hopes of her children's welfare from it. What Moses prohibited was merely simultaneous polygamy with two sisters; that sort of marriage in which Jacob lived when he married Rachel as well as Leah."

Again he says (p. 122)—

"The strongest and most decisive argument against the consequential system is drawn from the case of marriage with the deceased wife's sister. The relationship here is as near as that of a brother's widow, and yet Moses prohibits the marriage of a brother's widow, and permits that of a deceased

wife's sister, or rather (which makes the proof still stronger) he presupposes it in his law as permitted, and consequently wished to be understood as forbidding only those marriages which he expressly specifies, and not others of the like proximity though unnoticed."

We have also the authority of Calmet, and of all the Jewish writers. The present Chief Rabbi of the Jews in England says, in a letter to the Marriage Commissioners—

"It is not only not considered as 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."

It has been contended that "a wife to her sister," ought to be translated, "one woman to another;" but, as I have already observed, the best Hebrew scholars unite in admitting the fidelity of our version of this passage, and in rejecting such a translation of it. Moreover, it will be seen that the effect of a prohibition to take one woman or wife to another in her lifetime, would be to render polygamy unlawful; and we know that polygamy was practised by the Jews without reproof for many generations after the promulgation of the Mosaic law. On the whole, then, it appears clear, that marriage with the sister of a deceased wife was not forbidden by the law of Moses.

Was it forbidden by the Divine Founder of our religion? Assuredly not. Our Saviour never spoke of it as a sin. He forbade the Jews to put away their wives except for cause of fornication; thus restricting the liberty that had previously been accorded to them in this respect. He was questioned as to the marriage of a woman with seven brothers in succession. In speaking on the subject he did not condemn marriage with a wife's sister, any more than he did when speaking on that of divorce. The apostles are equally silent on this subject. Among all their warnings and prohibitions, we nowhere find one respecting these marriages.

But we are told that these marriages were prohibited by the early Christian Church. Let us see on what foundation this assertion rests.

Marriage with a wife's sister was forbidden by the Roman law, and those Christians who were Roman citizens were doubtless bound by that law in this as well as in other respects; but there is no evidence to show that for several centuries after the Christian era marriage with a deceased wife's sister was held by the Church to be unlawful. In *Riddle's Christian Antiquities*, I find the following passages:—

"In early ecclesiastical writers, we find more frequent reference made to the Roman laws and institutions respecting marriage than to those of the Mosaic dispensation; nor was it till the sixth or seventh century that the latter appear to have received any especial attention from the Christian

Church. After the lapse of several centuries from the institution of Christianity, the Mosaic prohibitions and other regulations were adopted with certain modifications in the Church."—[p. 109.]

In a debate which took place in this House some years ago, a right rev. Prelate (the Bishop of London) referred your Lordships to the *Apostolic Canons*. The authenticity of those canons has been disputed by many learned men: that they are the canons of the apostles is asserted by none. Bishop Beveridge believed them to be of the end of the second, or the beginning of the third century. A later date is usually assigned to them, but taking for granted that they are of the age supposed by Bishop Beveridge, what then? The 13th Canon declares—

"That he who after being baptized, is involved in two marriages, or has kept a concubine, cannot be a bishop or clergyman."

The 14th—

"That he who marries a widow, or one that is divorced, or a harlot, or a servant, or an actress, cannot be a bishop or a clergyman."

The 15th—

"That he who marries two sisters, or his niece, cannot be a bishop or a clergyman."

The 19th—

"That of those who enter bachelors into the clergy, readers and singers only do marry afterwards if they so please."

Your Lordships will observe that these canons apply exclusively to the clergy, and that with regard to the clergy they forbid second marriages, and marriages with a widow as distinctly as they forbid marriages with a deceased wife's sister. It is well known that at this time celibacy was regarded by the Church as a purer and holier state than matrimony, and that marriage was therefore hindered and obstructed by all sorts of restrictions and impediments. Riddle, in his *Christian Antiquities*, says (citing Bingham,) "That persons who had contracted a second marriage were incapable of ordination." Second marriages were declared by Athenagoras to be no better than "decorous adultery;" and third marriages were stigmatised by St. Basil as "no marriage at all," "moderated fornication."

Presbyters who married were degraded from their orders, and persons marrying for the second time were obliged to undergo penance. The Council of Eliberis was also referred to by the right rev. Prelate. The Council of Eliberis, or rather Iliberis (for I find in *Mariana's Chronicles of Spain*, that this council was held in the year 305 at Iliberis, on the site of which Granada now stands, and not at Eliberis, or Elvira, near the Pyrenees), was composed of nineteen Spanish bishops, and was

a mere provincial council. I hold in my hand a paper containing an extract from these canons; but I will not read it to your Lordships, as I should appear to be seeking to throw ridicule on the subject. It is sufficient to say that they are characteristic of the age in which this council was held. The canon which relates to marriage with a deceased wife's sister only says, that the person who contracts it shall abstain for five years from communion. And I would ask why this canon is to be looked on as more binding than the other canons of the same council? It cannot fairly be argued that some are binding and some are not.

We come next to the Councils of Neocesarea, of Ancyra, and of Laodicea, the canons of which were sanctioned and confirmed by the Œcumenical Council of Chalcedon in 451. By all those councils marriage, especially by the clergy, was discountenanced. The degrees of relationship within which marriage was forbidden were extended by Pope Alexander II. to the seventh degree; and it was not till the pontificate of Innocent III. that marriages within the seventh and beyond the fourth degree were permitted. Spiritual affinity was also invented, that is, a relationship between the godfather and the godmother of the same child, and between each and the relations of the other.

Marriages within the fourth degree are still unlawful in the Roman Catholic Church, and require dispensation. It is, however, to be remarked, that the Roman-Catholic Church has never asserted a right to dispense with any law of God; whence it follows that the Roman-Catholic Church by granting dispensations in the case of marriage with a deceased wife's sister or niece, declares that they are forbidden only by the law of the Church, and not by the law of God.

Let me now call your Lordships' attention to what Chief Justice Vaughan says of the canon law, to which some persons seem inclined to pay so much deference. I quote from his judgment in the case of *Harrison v. Burwell*:—

"With the canon law, at what time would you begin? for it varies as the laws civil of any nation do in successive ages. Before the Council of Lateran it was another law than since, for marriages before were forbid to the seventh degree, from cousins-german inclusively; since to the fourth.

"Every Council varied somewhat in the canon law, and every Pope from the former, and often from himself, as every new Act of Parliament varies the law of England more or less; and that which always changeth can be no measure of rectitude, unless confined to what was the law in a certain time, and then no reason will make that a better measure than what was the law in a certain other time: as the law of England is not a righter law of England in our king's reign than another, yet much differing."

So much for the canon law before the Reformation. Let us now look at our own.

Archbishop Parker in 1560 framed a table of degrees of relationship within which marriage was said to be unlawful. Thirty degrees were herein prohibited, fourteen of which are not prohibited in Leviticus. It was by virtue of the principle of parity of reasoning that these fourteen degrees were held to come within the scope of the Mosaic law.

It is worthy of remark, that Archbishop Parker, in a note written in his own hand on the margin of a copy of the admonition with which he accompanies his Table, gives the names of five eminent divines, Lyranus, Fagius, Pellicanus, Vatablus, and Brentius (three of whom were Protestants, and two Catholics), who "permit marriage with the sister of a deceased wife." I quote from Strype's *Life of Parker*. The Convocation of 1603 adopted this Table. The 99th Canon runs thus:—

"No person shall marry within the degrees prohibited by the laws of God, and expressed in a Table set forth by authority in the year of our Lord God 1563; and all marriages so made and contracted shall be judged incestuous and unlawful, and consequently shall be dissolved, as void from the beginning, and the parties so married shall by course of law be separated."

It will be seen that this canon prohibits the clergy only by implication from celebrating marriages within these degrees, and that it commands the laity to abstain from contracting such marriages.

The Convocation had no power to enforce obedience to this command.

Lord Hardwicke's judgment in the case of *Middleton v. Croft*, has made it certain that no canon, unsanctioned by an Act of Parliament, is binding on the laity. I do not believe that these canons are binding on the clergy; many are altogether disregarded by them. Hear, my Lords, what a Prelate, now living, says of these canons. Bishop Short, in his *History of the Church of England* (vol. ii. p. 40), tells us, that—

"Many of them have been superseded by subsequent Acts of Parliament; and the hand of time, together with the change of customs, has rendered them so generally neglected as a code, that it is much to be wished that they were remodelled and sanctioned by a legal enactment."

A dignitary of the Church held much the same language in the last century. I find in the works of Archdeacon Sharp this passage:—

"Now as to the canons in particular, I believe that no one will say that we (of the clergy) are bound to pay obedience to them all, according to the letter of them. For the alterations of custom, change of habit, and other circumstances of time and place, and the manners of the country, have made some of them impracticable: I mean prudentially so, if not literally."—[Vol. iii. p. 11.]

If a prelate and a dignitary of the Church take this view of

the canons, I may, without offence, say, that no argument against this Bill can be founded upon them.

The 99th Canon says, that this Table set forth by authority (I know not by what authority), expresses the degrees prohibited by the laws of God. Where, and how prohibited by the laws of God?

The 21st Article of the Church of England expressly declares that—

"When they (General Councils) be gathered together (forasmuch as they be an assembly of men whereof all be not governed with the spirit and word of God) they may err, and sometimes have erred, even in things pertaining unto God. Wherefore things ordained by them as necessary to salvation, have neither strength nor authority, unless it may be declared that they be taken out of Holy Scripture."

Can it be declared that these prohibitions are taken out of Holy Scripture? May not the Convocation of 1603 have erred, as General Councils have erred? I now come to the statute law. Your Lordships will remember that Henry VIII. married, under the authority of a dispensation by the Pope (Julius II.) the widow of his elder brother Arthur; that he had three children by her; and that it was not till after a union of more than 20 years that, becoming enamoured of Anne Boleyn, he wished to procure a divorce from Queen Katherine. Failing to induce the Pope to dissolve the marriage, Henry endeavoured to procure from the universities of Europe a declaration that the marriage was in their opinion null and void. In this endeavour he partially succeeded. Intimidating some and corrupting others, he obtained from many the wished-for declaration.

He then caused an obsequious Parliament to pass an Act, the 25th Henry VIII., c. 22, dissolving his marriage with Queen Katherine, bastardising the issue of that marriage, and settling the succession to the Crown on the issue of his marriage with Anne Boleyn. In this Act, marriages within certain specified degrees of relationship are prohibited, and amongst those degrees is that of the wife's sister. Two years afterwards, Henry having put Anne Boleyn to death, and married Jane Seymour, caused his Parliament to pass the Act known as the 28th Henry VIII., c. 7, declaring the issue of both the former marriages to be illegitimate, and settling the succession to the Crown on the issue of his marriage with Jane Seymour.

In this Act the prohibitions as to marriage were repeated almost in the same words. The next statute relating to marriage is the 32nd Henry VIII., c. 38. This statute declares that—

"All persons be lawful (that is, may lawfully marry) that be not prohibited by God's law to marry; and that no reservation or prohibition,

case of *Hill v. Good*, in which the Judges held, in accordance with the opinion of Chief Justice Vaughan, that the 1st Elizabeth, c. 1, by reviving the 28th Henry VIII., c. 16, in which reference is made to the 28th Henry VIII., c. 7, revived by implication this latter Act, and that the Levitical degrees spoken of in the 32nd Henry VIII., c. 38, were to be taken to be the degrees prohibited by the 28th Henry VIII., c. 7. This decision has, I believe, ruled all subsequent decisions; and in the case of the Queen against Chadwick, in error, the Judges of the Court of Queen's Bench held, in 1847, that marriage with a deceased wife's sister was included in the prohibited degrees, and that it had, therefore, been rendered absolutely null and void by the Act of 5th and 6th William IV., c. 54, to which Act I am about to advert.

The effect of this decision was to exempt from all punishment persons who having married the sister of a deceased wife, married another woman in her life-time. In 1835, my noble and learned friend, Lord Lyndhurst, whose absence on this occasion I deeply lament, brought a Bill into this House to alter the law relating to voidable marriages. The title of the Bill introduced by my noble and learned friend was, "An Act to limit the time for commencing suits in the Ecclesiastical Courts, so far as they may affect the children of parents married within the prohibited degrees." The preamble of this Bill was this:—

"Whereas the children of parents married within the prohibited degrees, are by law legitimate, unless such marriages be declared void by sentence of the Ecclesiastical Court during the lifetime of their parents, be it enacted," &c.

The Bill then proceeds to enact—

"That the children of parents married as aforesaid, shall be and continue legitimate, unless a suit be duly instituted for annulling the marriage of their parents within — years from the celebration thereof, or in the case of a marriage already had, unless such suit shall have been commenced within — years from the time of such marriage."

I ask your Lordships if this does not show what were the intentions of the framer of this Bill? It is clear that Lord Lyndhurst did not mean to render null and void all future marriages contracted within the prohibited degrees.

Contrast the title and the preamble of this Bill with the title and the preamble of the existing Act. The title of the Act is, "An Act to render certain Marriages valid, and to alter the law with respect to certain voidable marriages." The following is the preamble:—

"Whereas marriages between persons within the prohibited degrees are voidable only by sentence of the Ecclesiastical Court pronounced during

the life-time of both the parties thereto: And it is unreasonable that the state and condition of the children of marriages between persons within the prohibited degrees of consanguinity or affinity, should be *ipso facto* void, and not merely voidable: be it therefore enacted," &c.

The Act then proceeds to prevent the annulling of marriages of persons within the prohibited degrees of affinity, which had been celebrated before the passing of the Act; but it does not—and I pray you to mark this—prevent the annulling of marriages between persons within the prohibited degrees of consanguinity: thus admitting that consanguinity and affinity are not, as has been asserted, one and the same thing: else why this distinction?

My Lords, I cannot tell you why the Act was made to differ so much from the Bill brought in by Lord Lyndhurst. I was not in Parliament at the time. My noble friend, Lord Ellesmere, in a speech made in the House of Commons in the year 1843 (March 8), gives the following account of the transaction:—

"In the year 1835 a most important statute was passed under somewhat peculiar circumstances, and I may also say of haste and undue deliberation, materially affecting a portion of the marriage laws of our country. However, Sir, it is known to hon. Members in general that the main object of that statute—originally, I believe, the sole object of it was retrospective—was for the legitimization and confirmation of a certain class of marriages which had taken place within the prohibited degrees, and which, up to that period, had not been void, *ab initio*, but voidable by sentence duly pronounced in the Ecclesiastical Court."

Now your Lordship will bear in mind that the 99th canon declares that they are void from the beginning, and that that canon, though it does not prohibit the clergy unless by implication from celebrating such marriages, prohibits the laity (which the Convocation had no authority to do) from contracting them, and says that marriages within the degrees prohibited by the laws of God, and expressed in a Table set forth by authority—it does not say by what authority—in the year 1563 (thus assuming that the degrees prohibited in this Table are prohibited by the laws of God) shall be adjudged incestuous and unlawful, and consequently shall be dissolved as void from the beginning, and the parties so married shall be separated.

Thus it appears that parties who had contracted a marriage adjudged by the canon to be incestuous and unlawful, were bound by the right rev. Prelate (the Bishop of Exeter) who now sits at the table, and by this House, in the bonds of an indissoluble union. I heard, I confess, with no small surprise that right rev. Prelate, in presenting last night a petition to this house, say that it was against the Bill for legalizing incestuous marriages. The right rev. Prelate used a term borrowed by the

canonists from the heathen mythology (*sine ceto veneris*), and signifying an unnatural conjunction. The right rev. Prelate has thus begged the question. We who desire to legalize marriages with a wife's sister and niece, say that such a marriage is not forbidden by God's law, and that it is not an unnatural conjunction. But, my Lords, if these marriages be incestuous, why did he support the Bill which rendered them legal? The right rev. Prelate must admit either that these marriages are not incestuous, or that he rendered legal and binding incestuous marriages.

To return to the history of Lord Lyndhurst's Act. Lord Ellesmere goes on to say—

“But, Sir, in the progress of that measure another enactment was grafted on it (how it originated I cannot ascertain), which extended the provisions of that statute to future marriages of the same description, and rendered them no longer voidable, but void and null *ab initio*. . . . The inconsistency of that retrospective confirmation and prospective annihilation was felt at the time, and after that prospective clause was grafted on it, the Bill was resisted almost to the death. But when it went through the other House of Parliament, hon. Gentlemen who felt the difficulty were yet persuaded to agree to the statute as it stood; but that agreement was made on a distinct understanding, which was implied by all who spoke, and acknowledged by most members, that it was in consequence of the lateness of the period (August, 1835) that they consented to the Bill, and not on a full and due deliberation on all the bearings of it; and that something like a promise was held out, that at an early period of the subsequent Session a due reconsideration should be given to the subject.”

It appears from this statement, the accuracy of which has never been questioned, that Parliament was taken by surprise, and betrayed as it were into making this most important change in the law; I say most important change in the law, because previously these marriages, though voidable, were seldom or never annulled, it being necessary that the requisite proceedings should be taken by a party interested in the succession to the property, so that, except in comparatively few cases, no one ever thought of disturbing those marriages. It is to be observed that even now they are not, strictly speaking, prohibited. The parties who contract them incur no penalty, and it is only the innocent children who are affected by the law.

My late noble and lamented friend, Lord Wharncliffe, forcibly impressed with the sense of the evils caused by Lord Lyndhurst's Act, presented a Bill to this House, in 1841, to amend it. He stated in a clear and convincing speech the ground on which he rested his case; but he did not call on your Lordships to give the Bill a second reading. In 1842, Lord Ellesmere, then Lord Francis Egerton, asked the House of Commons for leave to bring in a similar Bill; but notwithstanding the powerful address which he made in support of that motion, he did not obtain leave

to bring in the Bill. In 1847, a commission was appointed by the Crown to inquire into the law of marriage, so far as it related to the prohibited degrees of affinity. The members composing that commission were the Bishop of Lichfield, Dr. Lushington, Mr. Stuart Wortley, Mr. Blake (a Roman-catholic lawyer), and Mr. Rutherford (the Lord Advocate of Scotland), all men distinguished for ability as well as for learning—three of them members of the Church of England, one a bishop of that church, one of them a Roman-catholic, and one a Presbyterian; and, I believe, with the single exception of Mr. Wortley, none of them in the slightest degree biassed on the subject. With respect to Mr. Wortley, I may observe, in passing, that he was originally unfavourable to the proposed change in the law, and that it was not till after a full investigation of the subject that he became satisfied of its propriety.

I will not read more than the two concluding sentences of the report made by those eminent men. They say—

“On a review of the subject in all these its different bearings, we are constrained to express our belief that the statute 5 and 6 William IV., c. 54, has not only failed to attain its object, but also to express our doubt whether any measure of a prohibitory character would be effectual. These marriages will take place when a concurrence of circumstances gives rise to mutual attachment. They are not dependent on legislation. We are not inclined to think that such attachments and marriages would be extensively increased in number, were the law to permit them; because, as we have said, it is not the state of the law, prohibitory or permissive, which has governed, or, as we think, ever will, effectually govern them.”

Such is the opinion of the Commission whose composition I have described.

In 1849, Mr. Stuart Wortley carried through the House of Commons a Bill, to render legal marriages within certain degrees of affinity. That Bill did not, however, pass the House of Commons till so late in the Session that it was not thought proper to send it up to this House.

In 1850, Mr. Stuart Wortley carried the same Bill through the House of Commons. It was brought up to this House; but, as I have said, it was withdrawn in consequence of the near approach of the end of the Session.

Your Lordships will remark, that these three propositions to amend Lord Lyndhurst's Act were made by men not given to innovation, but by men holding conservative opinions—the late Lord Wharncliffe, Lord Ellesmere, and Mr. Stuart Wortley.

I now pass to the consideration of the objections which have been urged to this measure on what are called social grounds. It is said that, if marriage with the sister of a deceased wife be permitted, the familiar intercourse that now subsists between a husband and the unmarried sister of his wife, will be put an

end to. I cannot think that there are many men who, while their wife is yet living, would calmly contemplate the possibility of marrying her sister. I am sure that there are few women who, in their sister's life, would contemplate the possibility of marrying her husband. If there be such persons, no law will regulate or restrain their feelings or their actions. It is not because a young married man may possibly become hereafter the husband of a young unmarried woman, who is not related to him, that he is not thought a safe or good companion for her, but because such companionship would be dangerous to her reputation, if not to her honour.

That the present law has, in all cases, obviated the danger of familiar intercourse between husbands and their unmarried sisters-in-law, cannot be asserted. If religion, honour, and good feeling are insufficient to restrain a man from seeking to gain the affections of his wife's sister, no law will do it. That wives would be jealous of their unmarried sisters if the law were altered, I do not believe. They were not so when the law practically permitted these marriages. Then, it is said that, after the death of the wife, her unmarried sister could not reside in the widower's house if she could marry him. I do not think that, in the present state of the law, a young unmarried woman can, without risking her reputation, reside in the house of a young unmarried man, though that man be her brother-in-law. Indeed, as was once remarked in this House by the Archbishop of Dublin (whose absence on this occasion I deeply lament), if a young man and a young woman residing in the same house may marry and do not, it is to be presumed that they have no inclination for each other; whereas if the law prevents them from marrying, their living together will occasion scandal.

A more pitiable situation can hardly be conceived than that of two persons brought together by the death of one who was dear to both, both deeply interested in the children she has left, and thus led to conceive a deep affection for each other, finding themselves forbidden by the law, not of God, but of man, to marry. We are told that a man who marries the sister of his deceased wife converts an affectionate aunt into a harsh stepmother. Why? What reason is there to suppose that she will be less affectionate and kind to the children as a stepmother, than one who is unconnected with them? However, my Lords, I will not argue these questions; for I feel that we are not called on to decide whether those marriages be advisable or not. The question is, are we justified in prohibiting them?

Many marriages are inexpedient. The marriage of an old man with a young girl, of an old woman with a youth, of a man who has a family of daughters with a woman of bad character,

and many others; but the law does not interfere to prevent them. If this principle were admitted, we might be called on to re-enact sumptuary laws, and to limit the expenditure of every man according to his means.

I will now proceed to lay before your Lordships some statistical information on the subject.

Some doubts having been expressed as to the accuracy of the statements made in the House of Commons, of the number of those marriages, considerable pains have been taken to verify these statements.

Respectable and trustworthy persons, one of them a barrister, whom I have myself seen, have been employed for this purpose. The result of their inquiries is, that in two districts (one of these the metropolis and its suburbs) and that in a very short time, there were discovered 850 of these marriages; of 143 of these the dates had not been ascertained; but it appeared that 84 had been celebrated between 1835 and 1840; 142 between 1840 and 1845; and between 1845 and 1850, 202; showing a rapid increase in the number of those marriages, and proving that public feeling is not with the law.

In the second district, which comprises the Potteries, and which contains a population of about 500,000, 625 cases had been discovered in a very short time, exclusive of several in respect to which it had not been possible to institute minute inquiries. Of this number 165 had been contracted before 1835; 93 between 1835 and 1839 inclusive, or about 24 per annum; in the next five years, from 1840 to 1845, the number rose to 150, or about 30 per annum; in the quinquennial period between 1845 and 1850 there were 173, or about 35 per annum; and in the year 1850 there were 41. Here again we see a regular increase in the number of these marriages.

It was, I believe, asserted, that one case only of this description existed in the parish of St. Margaret's, Westminster. I hold in my hand a list of no fewer than 28 cases in that parish. The names and addresses of the parties are given in this list, so that any one who wishes may satisfy himself as to its accuracy. These marriages have been contracted by persons in every class, from the highest to the lowest, and by moral and religious persons who would be as unwilling to violate the law of God as any of your Lordships.

I do not say that those who knew what the legal consequences of their acts would be have a right to expect the Legislature to alter the law, because it injuriously affects them; but I do say that the fact that a number of moral and religious persons conversant with the Scriptures, contract these marriages is a strong argument in favour of a modification of the existing law.

Then, my Lords, I ask you to consider the view which is taken of this question by moral and religious persons not affected by the law.

In the Appendix to the Report of the Marriage Commissioners, I find the evidence of Lord Marcus Hill, touching a marriage of this description, contracted by his brother, Lord George Hill.

The whole of that evidence deserves attention, but I will only read the following passages from it. He is asked—

“Have they been received in society on the same footing since their marriage as before?”

Lord Marcus replies—

“I have no reason to doubt it. As soon as they returned from the Continent, they came to London, and went over to Ireland. In regard to the reception generally given to my brother and sister on their return from Altona, I may add that Lord Winchelsea, who is Mr. Knight's neighbour, near Godmersham, invited them to Eastwell Park, and that other neighbours called on her. Since their return to Ireland, every one, high and low, has been to see her, and many have expressed their strong approbation of their union; such as Lady Bangor, Mr. and Lady Helena Stewart, Sir James and Lady Stewart, Rev. Dr. and Mrs. Kingsmill, Rev. Mr. Atkins, Rev. Dr. and Lady Anne Hastings, Mr. Ball, Mrs. Otway, and many others; the common people approving highly, and some saying how wise George had been not to bring a stranger into his family.”

Does any one believe that the noble Earl here referred to, would have invited to his house a couple whom he believed to have contracted an incestuous marriage, or to be living in a state of concubinage? Does any one believe that the other highly respectable and estimable persons whose names I have read would have called on Lord and Lady George Hill if they looked on their marriage as incestuous? Would they have expressed approbation of their union?

Surely, my Lords, this sufficiently proves that persons who contract these marriages do not lose their position in society. In other countries, with very few exceptions, these marriages are permitted. In all Roman-Catholic countries, by dispensations.

Cardinal Wiseman says, in his evidence given before the Marriage Commissioners, that these marriages are held by the Roman-Catholic Church not to be prohibited in Scripture. “It is considered a matter of ecclesiastical legislation.”

He is asked, “When you say unlawful, you mean unlawful by the law of the Church?” He answers, “Certainly.” Then, the next question put is, “And when you think proper to dispense with such unlawfulness, you think proper to dispense with a regulation of the Church, and not with a prohibition of Scripture?” His reply again is, “Certainly.”

There is, I believe, no Protestant country, except some of the Cantons of Switzerland, in which these marriages do not take place—in some with, in some without, a dispensation.

Even in Russia, where the established religion is that of the Greek Church, by which these marriages are prohibited, persons not being members of the Greek Church may contract them. It is true, as I have said, that the Greek Church prohibits these marriages, but it also prohibits all marriages within the seventh degree of relationship, so that a man may not marry his wife's second cousin. The example of the Greek Church will scarcely be held up to us for imitation. But even the Greek Church, though it prohibits these marriages as a matter of ecclesiastical discipline, does not look upon them as being forbidden by the law of God. For this statement I have the authority of the Rev. Narcissus Morphinos, the minister of the Greek Church in London, and that of Mr. Leon Melas, who formerly held the office of Minister of Justice in Greece.

I have already cited many authorities of great weight to show that there is nothing repugnant to the law of God, or to the law of nature, in these marriages. There are yet a few to which I must call your Lordships' attention. The late Bishop of Llandaff, in a published letter, declared that he saw nothing in Scripture to warrant the prohibition of these marriages. The Archbishop of Dublin, the late Bishop of Meath, and the Bishop of Lincoln, have made a similar declaration. The Bishop of Lichfield was a member of the Commission to whose report I have referred. I am authorized to say that the Bishop of Durham does not object to this Bill as being inconsistent with the divine law. I believe that I am justified in saying that the Bishops of Norwich and of Manchester look on this branch of the question in the same light.

In America these marriages are not only not objected to, but, to use the words of that great jurist, Mr. Justice Story, they are considered the best sort of marriages. That they are legal in America, we are also told by another eminent jurist of that country, Chancellor Kent.

Many dignitaries of the Church—among them the Chancellor of the diocese of Exeter, Chancellor Martin, and a very large number of parochial clergymen, not only look on these marriages as permitted by Scripture, but desire that they should be legalized.

Mr. Dale, Mr. Gurney, Mr. Villiers, Mr. Champneys, and Dr. Hook, men having the care of large and populous parishes, and mixing much with the poor, all speak of the evils occasioned by the existing law, and urge its amendment. Several eminent divines of the Presbyterian Church, among them Dr.

Chalmers, and Dr. Eadie (the Professor of Biblical Literature in the University of Glasgow), hold marriage with the sister of a deceased wife to be permitted by Scripture. This is likewise the opinion of almost every Dissenting minister in England, of every persuasion. I have ascertained that the petitions which have been presented to this House for the alteration of the law in respect to these marriages, have been signed by upwards of 160,000 persons; they would have been signed by a much larger number, if so early a day had not been fixed for the second reading of this Bill.

My Lords, I say to the opponents of this measure, if you can show that the marriages which it is proposed to legalize, are forbidden by the word of God, that they are contrary to the law of nature, or that they are inconsistent with the well-being of society, you may call on the House to reject this motion; but the burden of proof is on you. If you cannot show this, you have no right to uphold a restriction which produces so much misery and so much evil. The documents which I have referred to, prove that the law is ineffectual. Parties desirous of contracting these marriages, if they are rich, go abroad; and it is doubtful whether such marriages contracted abroad, are or are not legal in this country. If they are poor, they marry at home; or where the clergyman happens to know of the connexion between them, and refuses on that ground to celebrate the marriage, they live together unmarried. Such is the effect of the existing law.

I call on you, my Lords, to ponder these things. I call on you to reflect on the awful responsibility which you incur in maintaining this law. I say an awful responsibility, for if these marriages are not prohibited by the law of God, you take on yourselves to put asunder those whom God has joined together. Reflect, then, I beseech you, and if you entertain a doubt on this subject, give the House by your vote this evening another opportunity of considering the very important question which I have ventured imperfectly to bring before it. I move that this Bill be now read a Second Time.

VISCOUNT GAGE.

MY LORDS,—It is never without the greatest reluctance that I venture to intrude myself upon your Lordships' notice, but I do so now with even more than ordinary reluctance, as I feel that I am, as it were, going out of my way to oppose many who have peculiar claims upon my respect, inasmuch as I must give them

credit for imagining, however erroneously, that they are compelled by conscience and religion to resist the passing of this measure. And God forbid that I should appear as its advocate, could I entertain the slightest shadow of a doubt as to the utter fallacy of their notions upon this subject, whether in its spiritual or its temporal bearings!

My Lords, I take my stand at once upon one of the simplest axioms of rational freedom when I say that any law which restrains a man in the exercise of an important natural right, by the deprivation of which his prosperity or happiness may be seriously affected, stands *ipso facto* as a tyrannical law, from which imputation it can only be relieved by proof shown to, and admitted by, the sustaining Legislature, either that the restriction complained of is a Divine command, or that it is necessary, or that it is so highly and so indisputably expedient as to justify the injustice done to individuals, by a greater amount of good to a greater number of individuals or to society in general.

My Lords, here is a law which is thus arraigned. The first plea in its favour is Divine command. Under this pretence it was imposed; under this idea it has been acquiesced in; and under this pretence it is even now still sought by some to be maintained. My Lords, among other reasons for thinking that the authority of Scripture is not applicable to the present case, I must observe that the Septuagint and the Vulgate do not afford even the little obscurity contained in the term "uncover nakedness." *Revelare turpitudinem*, is the phrase used in the latter, *turpitudinem ejus non revelabis*. And the Greek is similar. Your Lordships can judge, therefore, how much foundation there is for the supposition, especially as the law-giver is not very delicate in expressing his meaning upon several subjects, which will be seen by reference to the 20th, 22nd, and 23rd verses of the 18th chapter of Leviticus. Should it be attempted to draw any support from the hidden source of Hebrew, I meet it at once by the evidence of the Chief Rabbi, who tells your Lordships that these marriages, far from being forbidden by the Jewish Church, are rather considered as desirable. And it would be hard, indeed, if the Jews did not know their own law in its positive enactments, even in their original Hebrew interpretation. For, however little they may now know of their ancient language, tradition would at least have instructed them in the fact of the existence of such prohibitions; and the Talmud is anything but a relaxation of the ancient law.

But then it is said that for 1500 years the Church has condemned these marriages, and canons have existed against them. Now I say, that this may be very well for those who maintain

the absolute infallibility of a dominant Church at all times, and in all cases; but it is scarcely an argument for your Lordships, who for the most part only allow to the purest, most honest, and most learned Church that has ever yet existed, what alone that Church professes to claim, such authority as it can clearly prove from Scripture. If, therefore, the founders of our Church have incautiously adopted a canon prohibiting that which of its own mere authority it had no right to prohibit, and which Scripture does not warrant it in prohibiting, now that the evil has become apparent, it is surely time for that Church to rescind such canon, and to cease opposition to the repeal of any secular law founded upon it. Why, my lords, what is the respect that the enacting Church has itself paid to its own canon upon marriage? For a certain fee it granted dispensation in all such cases, and even in cases of blood-relationship, which it had as authoritatively and much more wisely forbidden. The pretended law of God was to be compounded for a fee to His Church—not a fine as penance for having broken, but a fee for permission to break the law. And yet our reformed Church, without any dispensing power, has retained the most useless, and because most useless, the most unjust, of those restrictions. Why, my Lords, the Roman Catholics are themselves setting the example of liberality in this case. They do not, like certain of their most vehement opponents, who have almost equal powers of annoyance, ask for a law to visit the sins of the parents upon the children, but they trust to the power of their own discipline to restrain the parents.

My Lords, an impression, which appears to me to be very erroneous, seems to exist in men's minds upon theological and Church subjects, namely, that we are now, and have been from the beginning, in a state of progressive deterioration as regards religious knowledge, and that opinions become more and more valuable as they recede backwards. Now, it stands to reason that the fact must be, *cæteris paribus*, the reverse. The Apostles, indeed, had supernatural powers conferred upon them, which enabled them with certainty to decide upon any matter brought before them; but these not having been continued to their successors, the character of each successive age influenced churchmen as well as others; and it soon came to be, that religious truth was decided by physical force; the strongest was the orthodox Church, and all others heretics. Persecution for opinion soon followed in natural course, and has continued, though under gradual mitigations, to the present day, when, however the disposition may linger in obscure quarters, the Christian world may at least be said to know better. The true spirit of Christianity, or I should perhaps say a much truer

spirit, is at least recognised. Why, then, are those who recognise it to bow to those who could not—the seeing to the blind? Why are we to remain saddled by the consequences of the superstitions of those who thought that terror could work real conversion—that sin could be bought off with money—and that useless, uncalled-for, unwarranted asceticism was a charm to win heaven? Your Lordships will remember that the sexual has ever been a favourite form of asceticism amongst devotees even long anterior to Christianity—that it was looked upon as a sort of supernatural virtue indicating special holiness—and you will remember how these notions, for which Scripture gives no warrant, were parodied in the Christianity of the middle ages, when public and private vows of celibacy and chastity were encouraged by the Church, first enjoined, then enforced, upon the clergy, and marriage itself treated rather as if it were a compromise with evil—rather as an evil to be tolerated by necessity, than a command of the God of nature, to be encouraged. And, my Lords, that this cloud hung partially upon the minds of religionists, even at the Reformation, you may plainly discern in the marriage ceremony of our own vaunted Liturgy. This so widely prevalent superstition may well account for the introduction of such canons into the early Church, and even for their intrusion into our own, but forms no reason whatever for keeping them, now that they are become inconvenient, and that the falsity of their origin is exposed.

My Lords, I am not one of those who would argue, in a case of this kind which has reference to general human nature, that the book of Leviticus is nothing to us, as I might, and should, in a matter of mere form or ceremony; were it, for instance, some Jewish question of second marriage, or marriage with a widow of a dignitary of the Church. But the book of Leviticus and the whole Scripture is silent upon the subject; and the representatives of those to whom Leviticus was specially addressed know of no such prohibitions as are contained in our canon; their traditions tell of none having ever existed. I think, then, that we may consider this objection as disposed of.

We now come, my Lords, to the theory of restrictions upon marriage. No one, however superficially acquainted with the natural history of the generation of animals, can be at a loss to perceive, and at once approve, the reasons of the prohibitions, whatever their origin, against the intermarriage of near blood relations. Yet, in this our canon is an enormous relaxation—a relaxation greater even than any naturalist could abstractedly approve. For, take a strong case—let two brothers, as often happens, marry two sisters, the children of these marriages may intermarry without offence to the Church, or the law, in spite of

the double kin of blood. And yet, while it is sought rigidly to maintain the restriction upon the cases before us, where no blood relationship at all is concerned, should any zealous restrictionist propose to re-enact the ancient canon, even only so far as such double first cousinship, how would such a proposition be received in this day? Is there a bishop on the bench who would dare to support it? Yet here is blood, here is reason. But affinity is a very different thing, and any restrictions regarding it must stand at least upon very different grounds.

My Lords, I do not, neither do I suppose that any one endowed with the commonest sense of propriety could, object to certain restrictions in the class of affinity. Unquestionably, in certain cases, restriction is desirable. But, then, these are cases of such monstrous misalliance as must, of necessity, shock the whole community, and which, probably, neither madness nor money would cause to be attempted once in a century. But the cases before your Lordships are not of this nature; they are not misalliances at all. For instance, let two families, B. and C., stand towards each other in unquestioned marriageable position. A. of family B., wishing to ally himself with family C., may do so with exactly equal propriety, through any one of the daughters D. E. F. of that family; one is as unobjectionable as another. Then, how can his making choice of D. render E. or F. objectionable? "Oh, they are become his sisters!" you may say. You may say so, certainly; but how are they become his sisters more than before? He has made no vows to them—they have made no vows to him. They have stood towards each other in no new position beyond that of the greater intimacy or estrangement which the circumstances of the marriage may have induced. The sisterhood is nothing but a mere legal fiction; and yet for such mere legal fiction, you deprive A. of a most important natural right—one, perhaps, most seriously affecting his happiness, and the well-being of his children, the right, namely, of supplying, should it so seem good to him, the premature loss of his wife by one whose real character he has probably had unusual means of ascertaining, and whose natural attractions may be presumed to be far more congenial to him than those of any other woman, from innate similarity to his late wife. This is the case often to a degree, when acting upon a mind shaken by morbid grief, which renders the law cruel indeed to the widower, and deprives the children of the most desirable of stepmothers.

And now, my Lords, what pretence has this law to remain on your Statute-books? How can its advocates justify the depriving of any man of so dear, so sacred a right, one so inti-

mately affecting his happiness, as the choice of a wife? Where is the necessity, where even the expediency, that can justify it? The evidence of your Commission shows evils without number attendant upon this law. What is the good of it? "Oh," say some of its advocates, "consider what injury you will be inflicting upon widowers and their children, by depriving them of the society and care of the sister and aunt, who, now that she can never be legally married to her sister's widower, does not scruple to live with him, and be as a mother to his children; whereas, you know, could they marry, this could never be." I know no such thing, but rather the contrary, for I know a case where the sister is thus living unmarried, and, without imputation of immorality, is looked down upon for thus living unmarried. My Lords, the merit of this argument (for merit I must not deny to it) consists in the very extraordinary boldness of the assumption, and the desperate ingenuity of its *tu quoque* upon us. According to them, then, it seems that all is perfectly well, and every proper person contented as it is; whereas, by relaxing the restrictions, we should be depriving widowers and orphans of a resource which they now possess—a boon bestowed merely by the restrictive law. My Lords, a very few moments' consideration must, I should think, be sufficient to send this notion to *limbo*, in search of its sister-in-law, the Levitical prohibition.

My Lords, there never was a time when such marriages did not occasionally take place, or when what is technically termed "doing worse," did not also occasionally take place. So much for this maudlin, supposititious delicacy, with which the advocates of the present restriction have been attempting to get up a cry among the ladies. As to the very law, too, it, in its present harshness, is not so very old. Have sisters-in-law only lived with, and rendered themselves useful to, their brothers-in-law and their children, since the period when the marriages in question were rendered by Act of Parliament *ab initio* null and void? Did they never do their duty when such marriages were only voidable? when they might marry, though the marriage might not in all results be quite safe from the cupidity of relatives? I speak, now, of the upper classes. But in middle and lower life, no such impossibility of marrying a deceased wife's sister, or niece, has ever been generally recognised or thought of; and yet amongst them, more than in the upper ranks of life, do sisters-in-law act the good part assigned to them.

My Lords, as to presuming to assert that in no case, in no individual instance, any such inconvenience as that alluded to, could take place, of course, that would be absurd, even if it depended upon individual whim and caprice, unexcited by

party cry. But I think I might venture to predict, that such instances will be very rare, after the excitement of the struggle has a little subsided. For women have been most cunningly excited upon the subject through their constitutional jealousy; and herein, I think, the agitators may find that they have much to answer for, whether the Bill pass or not, as they have sown seeds of evil which they cannot so easily eradicate. Women have been talked to at one time as if this Bill were to enable a man to marry his wife's sister during her life; at another, as if it were to compel him to do so after her death, and as if that were to be specially hastened for the purpose: in all cases carefully leaving out of view the probability or possibility of any other second marriage, than with the sister. Now, if you will inquire into the matter, I think you will find that the objection of the ladies is, in reality, to the idea of second marriage at all; naturally enough, they cannot bear the idea of being superseded. In other instances, their sensibility has been alarmed by the authoritative "of course no woman could think of remaining in the house of a widower, if it were possible he could marry her;" the cunning dictator calculating well that the simple question, "Why not?" which would break his talisman, is just what his fair pupil would least think of asking, or would fancy she dared not ask, if it should occur to her. And it is in this sort of case, and in the upper or richer ranks of life, where the inconvenience would be the least felt, and the secession more easily supplied, would nine out of ten of such instances (if indeed so many ever did occur) happen. Your Lordships know that in your own sphere it would not, even under the present law, be reckoned quite *comme il faut* for a young sister-in-law to live alone with, or with only very young children, with a young brother-in-law, under this pretence of sisterhood, merely because they could not legally marry; yet this is held out to you as a good that must be barred by the repeal of the law. In the ranks below you, indeed, necessity may sometimes compel this, and want of refinement may tolerate an undue familiarity, under pretence of sisterhood, which you would not tolerate. But over such things you have no control; and if this measure should have the effect of restraining such undue familiarity, no harm will be done. It neither compels the proposal of the man, nor the acceptance of the woman. She is still the deceased wife's sister, and aunt to her children. And this is the obvious answer to any question regarding her position; it is all she ever needed—all, probably, that either she or the widower thought of, or might have thought of, had it not been put into their heads by officious zealots.

And yet, my lords, this objection is not so utterly void of

foundation as was the former, for there will be an inconvenience, a factitious one, and I will tell your Lordships what it is. What would a woman fear? Not a proposal which she might decline if she pleased, and which if she had reason to expect, and did not intend to accept, she would not even now, if a woman of any delicacy, expose herself to. But what a woman would fear is the imputation *d'autrai*, that such was the motive of her charity to the widow and orphans. The law is a certain degree of defence to her in this, which, being removed, she must defend herself as she can. But this is only an example of all the rest of the objections, which are a magnifying and giving preference to the weaknesses and less amiable qualities of the sex, over those holy and magnanimous virtues which, God be praised, preponderate so greatly, not only among our own favoured and educated countrywomen, but which are innate in the very soul of that most unselfish, most noble, and chivalrous refiner of our nature—woman! Should not the fact, were it even a solitary instance, of one dying mother having implored the father of her children to supply her place with her sister, outweigh a thousand-fold all the gratuitous grovelling suppositions of misery to be caused by unfounded and visionary jealousy, of which we have heard so much from those who would arrogate to themselves the protectorship of woman, while, from want of sufficient nobility of mind to grasp her real nature, they are only the libellers of the sex.

But really, my Lords, this is, after all, mere trifling. Let the inconvenience threatened be tenfold what it is possible for it to be, look at the evidence before you, and you will find it overborne, out and out, on the side of repeal. For you must not forget that where this question concerns your class of life to the value of a grain, it concerns those below you a pound. A man who can command the services of others may contrive to live without wife or female relative, but a poor man cannot, especially if he has children to look after; and you know, or ought to know very well, that in cases where juxtaposition between people of opposite sexes is thus effected, it is much safer that they should be able to marry, if they wish it, than not. Look, I say, at the evidence, and then tell me whether this law has proved that safeguard to morality and virtue which its supporters would represent it to have been. Instead of a safeguard, it has proved a betrayer.

My Lords, here is a grievance felt by many individuals, and not only by individuals but by societies, and acknowledged by many of those who from their position (for I speak of clergymen) would naturally of all others uphold the law as it stands. But they cannot resist facts and the evidence of their own

senses, and they urge upon you the change for the benefit of their cures. We have also petitions extensively signed by firms of solicitors and also by medical men; and when it is considered how much these two classes are connected with the interior of families, it can scarcely fail to strike your Lordships as a circumstance of some importance, that they should have combined to come forward and testify to you how deeply the grievance of this law is felt. I do therefore implore the heads of the church to consider these things, and not wantonly, and for a mere fiction, to perpetuate so great an evil. They must see that they cannot, even were it ever so desirable, render the law effectual; for men will not, in spite of all they can say or do, recognise as a truth the fiction which calls their wives' sisters their own; they feel that it is not so, and will resist a law which they hold to be uselessly tyrannical. My Lords, how is such a law to be enforced? Alas, the consequences fall not upon those who brave it, but upon their innocent offspring; and when these shall meet the punishment of the imputed sin of their parents, will they recognise its justice, will they humbly kiss the rod, and range themselves as supporters of a Church which has doomed them to ignominy and confiscation? Will they not inquire into the reasons and causes of their doom? And will what they may discover aid their reverence for an Establishment which is even now pressed by unscrupulous assailants, ready and eager to take up any cause, to hit any blot, to whom a grievance is a prize? Can it then be for the good of the authority of the Church itself to insist upon upholding a law which it cannot hope to defend as divine, which it cannot directly enforce, but which in its operation entails the misery of privation upon those who are restrained by it, and the misery of illegitimacy and deprivation upon the children of those who infringe it, and who will therefore be born each child a natural enemy to the Church of England, as a victim of its adhesiveness to injustice—an injustice rendered even the more galling by the spectacle of other nations with institutions and churches far less liberal, where the law that dooms them here has been relaxed, not only without detriment, or bringing on the evils so lavishly predicted by the opponents of this measure of relief, but with the happiest results?

(3) 19

Marriage with a Deceased Wife's Sister.

SPEECH

OF

THE EARL OF ST. GERMANS,

IN THE HOUSE OF LORDS,

Monday, June 21, 1852,

ON THE

PRESENTATION OF PETITIONS IN FAVOUR

OF RENDERING LAWFUL

MARRIAGE WITH A DECEASED WIFE'S SISTER.

PUBLISHED FOR THE

Marriage Law Reform Association,

INSTITUTED 15TH JANUARY, 1851,

*For the exclusive object of Promoting the Passing of an Act to render Lawful
Marriage with a Deceased Wife's Sister.*

COMMITTEE ROOM—26, PARLIAMENT STREET, WESTMINSTER.

Seeleys,

FLEET STREET, AND HANOVER STREET,

LONDON. M.DCCC.LII.

In the House of Lords, on Monday evening, June 21, 1852, petitions in favour of rendering lawful marriage with a deceased wife's sister, were presented by the Marquis of Lansdowne; Lord Wodehouse; Viscount Sydney; the Earl of Minto; Lord Stanley, of Alderley; the Earl of Lanesborough; and Viscount Gage: after which the Earl of St. Germans spoke as follows:—

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judgment on this question. I therefore say that these petitions speak the sentiments and express the wishes of a very large, a very intelligent, and a very respectable body of persons. My Lords, I trust that the anticipation of a more exciting discussion will not prevent your Lordships from doing what is just to the statement which I think it my duty to make on

SPEECH

OF
THE EARL OF ST. GERMANS,

ETC.

My Lords, I have undertaken, at the request of a very large, a very intelligent, and a very respectable body of persons, to present to your Lordships a number of petitions, praying that you will concur with the other House of Parliament in amending the Marriage Law of this country, so far as it relates to marriage with the sister of a deceased wife. My Lords, great pains have been taken to verify the signatures, and to ascertain the station in life of the persons who have signed these petitions. The number of signatures appended to the petitions which have been presented by other noble lords, and which are about to be presented by myself, exceeds 98,000. Amongst them are the signatures of many clergymen of the Established Church, of many ministers of different persuasions, of magistrates, of bankers, of lawyers, of medical men, of tradesmen, and of mechanics; the petitions have also been signed by nearly 16,000 married women, a class whose opinions have been frequently represented as unfavourable to the proposed alteration in the Marriage Law. My Lords, I believe there is not the name of a single person attached to these petitions who is not competent to form a correct

judgment on this question. I, therefore, say that these petitions speak the sentiments and express the wishes of a very large, a very intelligent, and a very respectable body of persons. My Lords, I trust that the anticipation of a more exciting discussion will not prevent your Lordships from listening with patience to the statement which I think it my duty to make on their behalf; it shall be brief.

My Lords, an association of persons deeply interested in the proposed amendment of the law, has been formed for the purpose of procuring and of diffusing information on this subject. It has been thought advisable by that association to ascertain the law and the practice of other countries in this respect. It has accordingly addressed enquiries to the proper authorities in foreign countries. And it has received from them authentic information on these points. My Lords, it appears by these communications, that, with the exception of four cantons and a half canton of the Swiss confederation, and of one state in the North American Union, this is the only country in which these marriages are not permitted (hear, hear). And, my Lords, I must guard myself, when I say this country, against admitting the law of Scotland to be the same as the law of England in that respect. Much doubt exists on that subject. Many lawyers, amongst others the late Lord Advocate Ruthersford, now a Lord of Session, are of opinion that these marriages are not invalid according to the law of Scotland (hear, hear).

My Lords, in some Protestant states, as Prussia, Holstein, the United States of America, and some others, no impediment is thrown in the way of these marriages; they are wholly unrestricted.

In others, as in Holland, in Hanover, and in many of the German Duchies, in all which the civil law is in force these marriages are indeed nominally prohibited, but practically they are permitted; the power of granting dispensations being vested either in the sovereign or in the ecclesiastical authorities, who never withhold those dispensations unless in cases where there has been criminal intercourse between the parties in the lifetime of the deceased wife. In Roman Catholic countries, as your lordships well know, dispensation is granted by the Pope, or by a prelate having power delegated by the Pope. The Jewish communities throughout the world, whose marriage code is the Levitical law, hold these marriages not only to be lawful, but to be laudable, so much so, that in the case of marriage with a deceased wife's sister, they abridge the interval which in other cases must intervene between the death of the wife and the contracting of a new marriage (hear, hear).

My Lords, in looking over the documents submitted to my inspection, I have found several passages which are well worthy your lordships' attention; a very few I will now read. In all the communications from foreign states, I find a general concurrence of opinion in favour of these marriages, I speak of public opinion as well as of that of the authorities. Experience has shewn that these marriages have not been productive of the evils anticipated by the opponents of the proposed change (hear, hear). I will, with your lordships' permission, quote, as a specimen, the following extract of a letter from M. Haberman, of the Ducal Consistory of Saxe Coburg:—"Having regard to the moral grounds which so particularly recommend marriages between a widower and the sister of his

deceased wife, when orphan children demand the care of a second mother, and that the importance attached to the relation of brother-in-law has no foundation in Scripture, such marriages have become common, and there exists only the form of asking for a dispensation from the still existing law." In like manner, M. Wydenberg, of the Grand Ducal Council for Ecclesiastical Affairs in Saxe Weimar, says:—"Such marriages are certainly according to the laws of the Grand Duchy among the prohibited ones, but dispensation is granted on demand, and on payment of a fee, according to the circumstances of the parties. For the poor, the highest ecclesiastical authorities approve them without reserve." Such is the state of the law in those Duchies. I will now read an extract of a letter from that very distinguished jurist, Judge Story. Speaking of the law and practice in the New England States—states, be it remembered, which are peopled by the descendants of the Pilgrim Fathers, men who regarded all the Mosaic precepts and all the Mosaic ordinances with great, I had almost said with superstitious, veneration, Judge Story says:—"There is not the slightest doubt, and never to my knowledge has been in Massachusetts, that the marriage of a man and the sister of his deceased wife, is perfectly lawful, and valid, and scriptural. Indeed such marriages are very common among us, and among all sects of Christians. I recollect at this moment *two* between Episcopalians, within the circle of my acquaintance, and I mention them only as it has been supposed to be against the Canonical Law of the Church of England to allow such a marriage. By many persons connections of this sort are deemed the most desirable, especially when there are children

of the first marriage. The same rule prevails, (as I believe) in all the other New England States, and in by far the greatest numbers of the other States in the Union. I recollect but a single exception—Virginia.

"Many years ago I had to consider this very question, as one of professional curiosity and learning. I was then of opinion, and still continue to be, that there is not the slightest foundation for any such prohibition in the Scriptures, and that wherever it exists, it has its foundation in some positive Municipal Law, or in the Canon Law as promulgated by the Romish Church, and thence transferred into the Canon Law of the English Church. It has been for more than a century and a-half a matter of dispute in England, whether any such prohibition existed in the Canon Law of the Church of England; and Parliament a few years ago passed a Statute which created the prohibition or recognised it. That Statute has given rise to new controversies on the subject, and has partly excited opposition in that country. I have several pamphlets in my possession, recently written, which discuss the subject at large, and with very great learning and ability, and all of them deny the scriptural foundation of the objection, and also that the Common Law deems such marriages prohibited. If I had ever entertained any doubts on the subject, these learned disquisitions would have perfectly dissipated them. But, in point of fact, everything that I have read upon the subject for the last twenty years, has satisfied me that the objection is perfectly unscriptural and unfounded. The subject is incidentally touched in my own work on the "Conflict of Laws" § 115, note 1, page 105. Many persons are of opinion

that the whole doctrine had no better or higher origin than in the practice of the Romish Church to grant dispensations in such cases. Of the correctness of this opinion, I do not pretend to judge; for I have never deemed it a matter of the slightest importance. So offensive would any such prohibition be deemed in Massachusetts, that I am satisfied, that if our legislature were to attempt to introduce it, it would be met with universal indignation and, *a fortiori*, any attempt of any religious sect to make it a part of its own laws, as unscriptural, would be deemed a usurpation of authority utterly unchristian and illegal.

"I well remember to have had a long conversation with my lamented friend, Judge Livingstone, on this very subject, near the close of his life, in which he maintained the same opinion with great earnestness and ability, and referred me to the pamphlet which he had written on the subject."

My Lords, I have a letter to the same effect from Chancellor Kent, another great authority. I hold also in my hand, a letter from a Protestant Bishop of the Episcopal Church, Bishop M'Ilvaine, the Protestant Bishop of Cincinnati, to the Secretary of the Marriage Law Reform Association. The Bishop, in answer to the enquiries addressed to him, says—

"A Clergyman married to his deceased wife's sister, and not under ecclesiastical process therefor in England, coming to this country, would not be prevented by such marriage from being received as a minister of the Protestant Episcopal Church here, or from exercising his ministry."

"I should have no objection, nor would any Episcopal clergyman that I am acquainted with in these

parts, have any objection to celebrate the marriage referred to on the presentation of suitable testimonials."

My Lords, such is the law, such the practice, and such the opinion of foreign countries. I am very far from saying that we are bound or concluded by the law, by the practice, or by the opinion of any foreign country. But I do think, that when we find Christian and Protestant States, who have the same opportunity of judging of the question as we have, and the same means of arriving at a proper conclusion; I say, when we find in all these States, the law, the practice, and the opinion on this question at variance with our own—I will not say with our own opinion, or our own practice, but with our own law—it becomes us well to examine the ground on which our law rests (hear hear).

Now, my Lords, what are the foundations of that law? The statutes of Henry the Eighth, and the 99th canon, to which so much importance is attached, are based on the assumption that such marriages are contrary to the word of God. My Lords, the people of England are a moral and religious people; and if you can satisfy them that these marriages are forbidden by Scripture, no man would seek to alter the law in this respect. But what is the case? Not only do many of the most eminent scholars and divines hold that there is no such prohibition, but the Right Reverend Bench is itself by no means unanimous as to the existence of such a prohibition. Indeed, I doubt whether a majority of that Bench are not of a contrary opinion. Several Right Reverend Prelates have declared, both in this House and out of it, that these marriages are not forbidden in Scripture.

Two made a statement to that effect in the debates which took place last session on this question. It is true they opposed the Bill for legalising these marriages, but they did so on the ground of social expediency, and distinctly admitted that there is no warrant in Scripture for this prohibition. I am not prepared to say that in this country, where every man has access to the Scriptures, and where the right of private judgment is claimed and acknowledged, all would defer to the decision of the Right Reverend Prelates, even if it were unanimous, but I cannot doubt that very many would be influenced by it. Such a decision has not been and will not be pronounced. I say then that the assumption on which our law is based, the assumption that these marriages are forbidden in Scripture, is a gratuitous assumption, unsupported by proof.

Before the passing of the Acts 5 and 6 William IV., c. 54, the law was certainly in an anomalous and inconvenient state. Marriages within the prohibited degrees were voidable, not void; that is to say, they could only be set aside while both parties were living. No proceedings for this purpose could be taken after the death of either of the parties. The status of the children of such a marriage was then a matter of uncertainty. Accident or caprice might determine whether they should or should not be legitimate and capable of inheriting. This was, as I have said, an anomalous and inconvenient state of the law, and the noble and learned Lord opposite (Lord Lyndhurst) did well in bringing in a Bill to amend it.

The noble and learned Lord introduced a Bill, having for its object the limitation of the period within

which such suits could be instituted. That Bill, in its progress through your Lordship's House, underwent a considerable change. A provision of a very different character was engrafted upon it. The effect of that was very nearly fatal to the Bill when it arrived in the other House of Parliament; and had it not been for the late period of the Session, and the expectation which was held out, that the subject would be again brought under the consideration of Parliament in the ensuing Session, I believe the Bill would not have received the sanction of the other House. But it did become law. Now, although that Bill was materially altered for the worse, it still recognised one most important principle. It recognised in the clearest and most express manner the difference between marriages within the prohibited degrees of consanguinity, and marriages within the prohibited degrees of affinity. The reason why the distinction was made was this—that the one description of marriage is contrary to the law of God, and the other is not (hear, hear). There is no disposition in the people of this country to contract marriages of the former description. Those who, regardless of the instinct of nature and the dictates of religion, contract such marriages, are looked on as guilty of a great crime. Legislation is scarcely needed to prevent their occurrence. There has been no desire on the part of any section of the people to alter the law with regard to marriages within prohibited degrees of consanguinity (hear hear). How different the feeling with regard to the law respecting affinity!

The judicial decision in the case of the Queen *v.* Chadwick, set at rest any doubts that might be entertained as to the effect and operation of the existing law. In

adverting to the case of the Queen *v.* Chadwick, I cannot refrain from reading an extract from a letter from a noble and learned Member of your Lordship's House, whose opinion will on this, as on every other occasion, be listened to with great deference and respect. I allude to Lord Denman; and I regret that he is not present to give effect to his opinions by a speech. The letter is dated "Parsloes, May 3rd, 1852," and is as follows:—

"I should hardly be justified in undertaking the petition you mention under present circumstances, though I am really anxious publicly to disclaim the imputation of having expressed any opinion upon the expediency or justice of the law you seek to repeal, in deciding the case of 'the Queen *v.* Chadwick.' On the contrary, I, in common with the other judges of the Court of Queen's Bench, took pains to rest our decision on the mere wording of the Act of Parliament, and avoided all discussion as to whether it was founded either on Scripture or reason. I am quite convinced, after a most careful examination, that those bishops are right who have expressed their opinion that there is no scriptural prohibition of marriage with a deceased wife's sister; and that it is, in fact, as the Bishop of St. David's declared, permitted by the Mosaic code. Considering who was the lawgiver, we cannot possibly impute inadvertence or mistake; and it follows, if this opinion be right, that the permission was purposely given. Upon the second branch of the question, as to the moral quality and social consequences of permitting such marriages, I cannot help thinking that the remark I have already made, if well founded, ought to have considerable, if not decisive, weight, and more particularly as these

marriages were held in honour by the Jews, to whom the law was given, and who must be supposed most competent to understand it.

"The assumption of evil consequences is entirely unsustained by evidence; and, among all the irregularities and crimes which have often revolted the public mind as polluting married life among us, I am not aware of a single instance in which marriage with a deceased wife's sister has been even suspected as the cause. With regard to the third question, that of 'expediency,' that is, the prevention of uncertainty by nullifying all such marriages, it appears to me that, as that experiment has wholly failed in point of fact, and such marriages are still contracted, notwithstanding the legal prohibition, by some of the most respectable members of the community, the only justification of the enactment, very doubtful in point of justice, is completely exploded by the result. A law which is universally felt to be more honoured in the breach than in the observance cannot too soon, in my opinion, cease to be a law. I have not time to enter fully into the argument, and perhaps shall never be able to do so; but, as you inform me that some value is attached to my opinion, I cannot feel myself justified in withholding that which I have deliberately formed."

My Lords, in the case to which I have referred, it was held that a man who, having married the sister of his deceased wife, contracted another marriage in her lifetime, was not guilty of bigamy. Of the invalidity of marriages of this description, if contracted in this country, there is, therefore, no doubt, but the case is very different with regard to marriages con-

tracted according to the *lex loci* in a country where they are legal.

My Lords, marriages which are good and lawful in the country in which they are contracted, are good and lawful everywhere; and the only question which arises in this particular case is whether any personal disqualification or disability is created by the 5 and 6 William IV., c. 54. I believe it is the opinion of the best and soundest lawyers, that it creates no such disqualification. On this point I should be glad to hear the opinion of the noble and learned lord opposite. Be that as it may, many such marriages are contracted under the belief that they are perfectly valid and legal marriages. If these marriages be really valid, then I say that you have one law for the rich and another for the poor; for the rich man, who can afford to pay the expense, may go to Berlin, or Frankfort, or Copenhagen, or any other place abroad where such marriages are legal, and marry his sister-in-law, but the poor man, who must go to the parish Church or the registrar's office, cannot contract such a marriage.

My Lords, I think that you have done either too much or too little in this matter. If these marriages are criminal, if they are forbidden by Scripture, you ought not to satisfy yourselves with rendering them null and void, and thus punishing only the innocent offspring. You ought to follow it up by a penal enactment inflicting penalties on the parties contracting such marriages, and separating them. I am not disposed to create artificial offences, that is, to make an act, innocent in itself, illegal;

but if you think fit to do so, you should vindicate the authority of the law and enforce its observance. You can only do this by punishing those who transgress it.

My Lords, it has been said in this House, that the act of 5 and 6 William IV. c. 54, did not legalise any marriage within the prohibited degrees, and that such marriages are still liable to ecclesiastical censure. This may be the law, but I know that no proceedings against the parties have ever been taken, and I believe that none ever will be taken; at any rate, I am sure that if such proceedings were taken Parliament would interpose and protect those whose marriages it had declared should not be annulled.

It was said, at the same time, that Parliament sanctioned these changes in the law only for the sake of the innocent offspring of these marriages. My Lords, will it be contended that the offspring of a marriage within the prohibited degrees of consanguinity are less innocent than the offspring of a marriage within the prohibited degrees of affinity? No, my Lords, as I have observed, Parliament legalised marriages within the degrees of affinity because they are not contrary to the laws of God, or the law of nature: it did not legalise marriages within the degrees of consanguinity because they are contrary to both.

My Lords, I am bound to respect the conscientious conviction of those who, having fully and dispassionately considered the question, are of opinion that God has interdicted marriage with the sister of a deceased wife. I do not appeal to them, but I appeal to those who have not so considered the question; I call on them to examine the grounds on which their opinion

rests, and not to be satisfied with a vague and general notion that such a marriage is wrong. More especially, my lords, would I appeal to those who believe that these marriages are not contrary to the law of God, but who refuse to legalise them because they think that they would be productive of social evils.

I might refer to the experience of other countries, and, so far as it goes, to the experience of this country, as shewing that no such evils are to be apprehended; and that in fact marriage with a deceased wife's sister is the best that a widower with children can make. But I will only say that if these imaginary evils were real they would sink into insignificance when compared with those which are caused by the existing law. Much unhappiness; much sin are caused by this law. Look at the evidence given by Clergymen, resident in the metropolis and in the populous towns of this empire. Almost all these Clergymen wish for an alteration of the law. Many have signed these petitions: more would have signed them, had they not been restrained by the fear of giving offence to their bishop.

But, my Lords, it is no part of our duty to inquire whether these marriages are or are not expedient. As the Archbishop of Dublin has well observed, many circumstances may make a marriage inexpedient, which no legislature ever dreamed of rendering illegal. Disparity of age, incompatibility of temper, bad health, bad character, are strong objections to a marriage, but have never constituted legal impediments in its way.

The real question is, Are these marriages contrary to the Law of God? and if not, Have we a right to forbid those to marry whom God has not forbidden to marry?

My Lords, if you will take these things into your consideration, you will, I think, be convinced that the restriction of which the petitioners complain is unjust, and that they are entitled to the relief which they seek at your Lordships' hands.

I must, in conclusion, express an earnest hope that when a Bill for the modification of the Law comes up from the other House of Parliament (and that such a Bill will come up in the course of the next Session, I have no doubt) your Lordships will be prepared to give it your sanction.

I would now move that the petition, which is well deserving of your attention, be printed, but as that motion would be inconsistent with the practice of this House, I must content myself with moving that it be read by the clerk at the table.

The following is a copy of the petition:

TO THE RIGHT HONOURABLE THE LORDS SPIRITUAL AND TEMPORAL
OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND,
IN PARLIAMENT ASSEMBLED,

*The Humble Petition of the undersigned Members of the Marriage
Law Reform Association of London, sheweth,*

That the important question, "What are the relations of consanguinity or affinity which ought to preclude marriage," was first made the subject of civil legislation in this country, in the reign of King Henry VIII., during which four Acts were passed touching this subject.

That in the first of these Acts are the following words:—"And furthermore, since many inconveniences have fallen, as well within this realm as in others, by reason of marrying WITHIN THE DEGREES OF MARRIAGE PROHIBITED BY GOD'S LAW," etc.

That in the fourth of the said Acts are the following words:—"Whereas heretofore the usurped power of the Bishop of Rome hath always entangled and troubled the mere jurisdiction and regal power of this realm of England, and also unquieted much the sub-

jects of the same, by his usurped power in them, as by making THAT UNLAWFUL WHICH BY GOD'S WORD IS LAWFUL, both in MARRIAGE and other things, as hereafter shall appear more at length," etc.

That this Act further contains the following words: "All and every such marriage as within this Church of England shall be contracted between lawful persons (AS BY THIS ACT WE DECLARE ALL PERSONS TO BE LAWFUL THAT BE NOT PROHIBITED BY GOD'S LAW TO MARRY) such marriages shall be lawful, good, just, and indissoluble, etc."

That all the Acts passed upon this subject in this and the three succeeding reigns, make it undeniably plain that the LEGISLATURE INTENDED to prohibit those marriages, AND THOSE MARRIAGES ONLY, which are UNDOUBTEDLY prohibited in the sacred Scriptures; and that they regarded it as a PROFANE USURPATION of the divine prerogative for ANY MAN to render UNLAWFUL THAT WHICH BY GOD'S WORD IS LAWFUL.

That the same principle of deference to scriptural authority is adopted in Canon XCIX. in the following words: "No persons shall marry within the degrees PROHIBITED BY THE LAWS OF GOD, and expressed in a table set forth by authority," etc.

That the same principle is admitted in the title of the table referred to, which is in the following words: "A table of kindred and affinity, wherein whosoever are related are forbidden IN SCRIPTURE and our law to marry together."

That the same principle is admitted in the matrimonial service of the Church of England, in the following words: "For be ye well assured, that so many as are coupled together OTHERWISE THAN GOD'S WORD DOTH ALLOW, are not joined together by God, neither is their matrimony lawful."

That it is therefore plain that the ECCLESIASTICAL as well as the CIVIL authorities of this realm, have intended to render unlawful those marriages, and those marriages ONLY, which are CLEARLY PROHIBITED in the Scriptures, and that if any other be rendered unlawful it was in error, and contrary to the design and intention of those authorities.

That in the judgment of His Grace the Archbishop of Dublin, the Right Revs. the Bishops of Norwich, St. David's, Lincoln, Lichfield, Durham, Worcester, Manchester, Sodor and Man, and other prelates of the Church of England; of Bishops Burgess, M'Ilvaine,

Potter, and other Bishops of the Protestant Episcopal Church of the United States of America; of numerous learned and pious commentators and divines of various ages, countries, and religious communions; and of very many distinguished legislators and civilians, sanctioned by the practice of almost every Christian nation in the world, GOD DOES NOT, in his word, DIRECTLY, OR INDIRECTLY PROHIBIT the marriage of a man WITH THE SISTER OF HIS DECEASED WIFE.

That there is NO EXPRESS PROHIBITION of this marriage in any part of the Bible.

That if the 18th verse of Lev. xviii. be translated correctly (as the learned admit), it is forbidden to a man to take his wife's sister in marriage, only DURING HIS WIFE'S LIFETIME.

That, to your petitioners, nothing can be plainer than that the EXPRESS LIMITATION of this prohibition to the lifetime of the wife, GIVES LIBERTY to contract such marriage AFTER HER DEATH.

That in the judgment of your petitioners, seeing that God has not prohibited this marriage, no man has authority to do so.

That the regulation of this matter is expressly claimed as inalienable from the divine prerogative, those who are rightly married being JOINED TOGETHER BY GOD, while none can be lawfully separated except as He ordains.

That if human legislatures may declare one marriage unlawful because they judge it inexpedient, they may declare any other marriage unlawful for the same reason.

That in so important a matter as the marriage union no prohibition can have binding influence upon the public mind, unless plainly sanctioned by the divine authority.

That even if it could be shown (which your petitioners cannot for a moment admit) that any legislature had authority to prohibit this marriage should they judge it expedient to do so, your petitioners would humbly represent not only that there exist no sufficient reasons for the prohibition, but many most weighty ones against it.

That it is peculiarly expedient to allow such marriages, for the following reasons:—

1. That the probabilities of domestic happiness are greatly increased by the opportunities which each party to the marriage has enjoyed of ascertaining, beyond doubt, the temper, habits, and sentiments of the other.

2. Where there are children by the first marriage, they will receive in their mother's sister a second mother, and be better cared for than under almost any other possible circumstances.

That by the Jews not only is Scripture understood to permit the marriage, but where there are children surviving, this marriage is allowed to take place sooner than in ordinary cases.

That such marriages are usually entered upon at a more mature age, with less of passion and more of deliberation, than other marriages.

That the assertion that evil consequences would flow from permitting this marriage, is entirely unsupported by proof.

That the continued permission of this marriage in almost every Christian nation in the world, is a proof that the evil consequences alleged as likely to follow from such permission are wholly imaginary.

That this marriage may be lawfully celebrated in the following countries, each of which has an independent jurisdiction in this matter: in the Empires of Austria, Russia (for the Lutherans), and Brazil; in the Kingdoms of Prussia, Spain, Portugal, Sardinia, Naples, Hungary, Holland, Sweden and Norway, Bavaria, Wirtemberg, Hanover, and Saxony; in the Grand Duchies of Baden, Luxemburg, Hesse-Darmstadt, Saxe-Weimar, Oldenburg, Mecklenburg-Schwerin and Mecklenburg-Strelitz; in the Electorate of Hesse-Cassel; in the Duchies of Saxe-Coburg, Brunswick, Holstein, Nassau, Saxe-Meiningen, Anhalt-Dessau, Saxe-Altenburg, and Anhalt-Coethen; in the Landgravate of Hesse-Homburg; in the Principalities of Lieppe Detmold, Reuss Greitz, Reuss Schleitz, Schwarzburg Sondershausen, Schwarzburg Rudolstadt, and Waldeck; in the Republican States of France, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Tennessee, Kentucky, Ohio, Michigan, Indiana, Illinois, Missouri, Florida, Texas, Iowa, Wisconsin, California, New Granada, and Peru; in the Republican Swiss Cantons of Bern (Jura), Lucern, Uri, Unterwalden, Zug, Fribourg, Appenzell, St. Gall, Grisons, Valais, Tessin, Soleure, Basle, Argovie, Neuchatel, Geneva, Zurich, and Schaffhausen; in the free Hanseatic towns of Bremen and Lübeck, and in the free cities of Hamburg and Frankfort.

That the population of the countries where this marriage is allowed amount to nearly 300,000,000.

That in the countries where these marriages are allowed, they are universally acknowledged to be happy ones for the husband, the wife, and the children; are often entered into at the urgent request of the dying wife; are earnestly recommended by the friends of both parties; and are cordially approved by the most worthy persons in the communities where they take place.

That, almost without exception, in countries where these marriages were formerly restricted by the requirements of dispensation, such restraints have been gradually relaxed, and in very many instances entirely removed.

That in Russia, where these marriages are interdicted to the members of the Greek church, they are freely permitted to all who dissent from that church; the necessity for even a dispensation having been entirely removed in the year 1832.

That the only countries known to your petitioners where this marriage is prohibited to Christians of all communions are England, Ireland, and four and a half of the Cantons of Switzerland.

That no reason has been adduced why a liberty granted by the Author of our being, and enjoyed by the rest of the Christian world, should be denied to the inhabitants of these realms.

That even could it be shown that it was lawful in the sight of God to prohibit this marriage, and expedient for the community that such should be the case, yet the present state of the law calls for the immediate interposition of the legislature.

That this marriage must be wholly innocent,—merely expedient and undesirable,—or actually CRIMINAL.

That if perfectly innocent, or merely inexpedient or undesirable, it should be left unrestricted by legislation.

That if CRIMINAL, such legislation should be adopted as would prevent the marriage from taking place.

That if the public judgment and feeling were with the law, the simple prohibition of the marriage would no doubt be effectual, as those who violated it would sink in the estimation of society.

That it is notorious that public feeling is not with the law.

That the community at large regard this marriage as not prohibited in scripture, that they consider the legalising of certain marriages of this kind in 1835, as a proof that the legislature did not regard them as contrary to the divine command; that they are aware that the

present law has been repeatedly condemned by the popular branch of the legislature, and are fully impressed with the conviction that the concurrent practice of other Christian nations must ere long be adopted in this country.

That the law as it now stands is set at naught by all classes of society.

That the violation or disregard of the existing law does not arise from any lawless disregard of the divine will, of the restraints of morality, or of the legitimate authority of the legislature; but from an unalterable conviction that this is a subject with which no legislature has a right to interfere; that its interposition originated in error, and is perpetuated from the influence of prejudice and a superstitious regard to obsolete ecclesiastical authorities.

That many persons in various countries, of high public character, and irreproachable morals, have contracted such marriages.

That it is an established maxim of our law, and indeed of the law of Europe, that any marriage which is celebrated in any of the British colonies, or in a foreign country, in such a manner as to be a legal marriage in the country in which it takes place, is a GOOD MARRIAGE in this country and all over the world.

That the spectacle of thousands of people whom the law declares not married, living reputably and faithfully as man and wife, fulfilling all social duties and relations, and respected and beloved by those around them, must tend to weaken the authority of the law upon the public mind.

That if the interests of society require that this marriage should be PROHIBITED, they must require that it should be PREVENTED, and that those who have so married should be SEPARATED by due course of law.

That it is a question for your Lordships' right hon. house, and especially for the right reverend bench, whether they are prepared to incur the solemn responsibility of decreeing the separation of those who have so married, and permitting them to contract other marriages.

That the magnitude of the interests, and the importance of the principles involved in this question, require that it should not be dealt with in an indecisive and inefficient manner; that the uncertainty felt with reference to it should not be allowed to continue; that the marriage under consideration should be freely permitted, or penally and effectually prohibited, and that without delay.

That the relief sought by your petitioners is not without precedent in this kingdom, many marriages of kindred once prohibited on the supposition of their being contrary to God's word, having been subsequently permitted, when found not to be opposed to the divine authority.

That your petitioners do not desire the repeal of the Act commonly called Lord Lyndhurst's Act, making prohibited marriages void, but simply that marriage with a deceased wife's sister having been prohibited under erroneous views of the divine will, should now be declared innocent, and made lawful.

Your petitioners therefore humbly pray your Lordships to concur in so amending the law of these realms, that the marriage of a man with the sister of his deceased wife shall no longer be prohibited.

And your petitioners will ever pray, etc.

The Petitions presented this evening, by the Earl of St. Germans and other Peers, were from the following places:—

(2) Bristol, 9,851; Birmingham, 6,079; Barnsley, 1,017; (8) Bath, 2,923; Bradford, 3,127; Burslem, 1,035; Devonport, 1,260; (6) Huddersfield, 1,001; Haworth, 1,006; Ipswich, 1,219; (4) London, 11,449 (headed by fifty-nine clergymen of the Established Church, in active duty, in large parishes in the metropolis); Leeds, 2,775; (2) Liverpool, 2,434; (2) Manchester, 3,251; Macclesfield, 1,280; Norwich, 1,894; Newcastle, 1,020; (11) Sheffield, 3,849; Stockport, 1,001; Wolverhampton, 1,110; Walsall, 1,142; Warwick, 1,205; York, 1,734; Ashford and vicinity; Almondbury; Armley; Abergavenny; Atherstone; Appledore; Ashburton; Avebury; (2) Ampthill; Bromley; (2) Burwell; Barrowford; Billericay; Bexley; Barnard-Castle; Brotherton; (2) Budleigh; Biggleswade; Blackburn; (2) Brill; Batley; Beeston; Bognor; Bridgnorth; Buckfastleigh; Bramley; Brixham; Bamford; Bridgewater; Burnham-Market; Broadwindsor; Burnham; Bury St. Edmund's; Beaminster; Barkway; Banbury; Beccles; Brigstock; Broadchalk; Brentwood; Bedford; Bushey; Brackley; Cinderford; Coventry; (2) Chudleigh; Colchester; Chester; Clare; Caistor; Canterbury; Coggeshall; Charlton-Horndean; Congleton; Christchurch; Chelmsford; Clavering; Crediton; Chard; Castle-Donington; Cadnam; Deal; Dewsbury; Dover; Dereham; Denbigh; Derby; Dunstable; Dudley; Durham; Elstead; Exeter; Farsley;

Fairford; Framlingham; Frampton-on-Severn; Finchingfield; Forton; Fairburn; Frampton-Cotterell; Fakenham; Farnworth; Godmanchester; Gloucester; Grassington; Gosport; Harwich; Handsworth; Honiton; (2) Hungerford; Holmfirth; Hunslet; Holbeach; Headingly-cum-Burley; Hyson-Green; Henley-on-Thames; Henham; Hammerton; (2) Heywood; Hartlepool; Ilkley; Ilminster; Kilmington; Knowle; Keighley; Kettering; Kingswood; Kingsbury; Leicester; Lynn; Liskeard; Luton; Lutterworth; Long-Melford; Leftwich; (2) Lichfield; Little-Waltham; (3) Launceston; Littleton-on-Severn; (3) Long-Sutton; Loughborough; Louth; Lincoln; Monmouth; Maiden-Newton; Melksham; Mere; Marsh-Gibbon; Meltham; Meltham-Mills; Middlesborough; Mixenden; Margate; Mattishall; Newport-Pagnel; Newport; Newent; North-Walsham; Northampton; Northallerton; Newbury; Oundle; Okehampton; Overton; Oakley; Pluckley; Petersfield; Poole; Peterborough; Pontefract; Pontesbury; Pembridge; Richmond; Romford; (2) Rochester; Roydon; Reading; Ramsgate; (2) Ross; (2) Rotherham; (2) Royston; Rhymney; Sampford-Courtney; (2) Southampton; Saffron-Walden; Swansea; Salisbury; Southminster; Stanford-Rivers; Shepton-Mallet; St. Neot's; Scarborough; Sandford-Crediton; Sherborne; (2) St. Ives; (2) Stourbridge; Stony-Stratford; Stanningley; Stratford; St. Colomb; Shrewsbury; (2) Skipton-Craven; Stanstead; St. Marychurch; Southport; Seaton and Beer; (2) Tewkesbury; Torquay; Torrington; Tawton; Tockholes; Torpoint; Tavistock; Tregony; Turvey; Towcester; Tiverton; Upwell and vicinity; Undercliffe; Walmer; Whitehaven; Woolwich; Wroughton; Wiveliscombe; West-Melton; Wollaston; Wrentham; Worksworth; Wem; (2) Wortley; Wheatley; Weytown; Witney; Wellingborough; Wrexham; Wheaton-Aston; Yarmouth; and Yardley-Hastings.

They were signed by nearly 16,000 married women, and nearly 84,000 male adults; in all, by 99,134 persons.

Marriage with a Deceased Wife's Sister.

OPINIONS

OF THE

REV. R. BICKERSTETH AND OTHER EMINENT DIVINES,

IN FAVOUR OF

THE LAWFULNESS OF MARRIAGE WITH
A DECEASED WIFE'S SISTER.

LONDON:

SEELEYS, FLEET STREET AND HANOVER STREET.

1853.

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23055

LONDON
BRADBURY AND EVANS, PRINTERS, WHITEFRIARS.

MARRIAGE WITH A DECEASED WIFE'S SISTER.

LEVITICUS XVIII. 18.

*“Neither shalt thou take a Wife to her Sister to vex her, beside the
other IN HER LIFE TIME.”*

THE above is the only text in which marriage with a
Wife's Sister is spoken of.

If such a marriage were displeasing to God in all cases,
is it credible that it should be forbidden only in one par-
ticular case? The Archdeacon of Lewes says: “Had
the intention been to prohibit the marriage of a Wife's
Sister altogether, even human wisdom would never have
taken a course so sure to defeat its purpose, as to lay
down a rule forbidding it solely in one particular case.”
Every year produces fresh admissions that these marriages
are agreeable to Scripture.

The BISHOPS OF ST. DAVID'S and NORWICH admitted
this in the late debate in the House of Lords. The
BISHOP OF DURHAM writes to the same effect.

The BISHOP OF LINCOLN says, in a letter to a gentleman who has contracted such a marriage: "I admit that marriage with a Wife's Sister is not forbidden in Leviticus." And numerous other Prelates, both dead and living, have given similar testimony.

The REV. DR. M'CAUL, January 1851, says: "I have no doubt that according to Leviticus xviii. 18. (Hebrew and English) marriage with a deceased Wife's Sister is permitted."

The REV. DR. (late Professor) LEE says, January 13, 1851: "From all I have been able to learn on the question, 'Whether a man may marry deceased's Wife's Sister,' my opinion is, that neither does Holy Scripture anywhere forbid it, nor ever did the Jews."

The REV. R. BICKERSTETH says, March 3, 1851: "As you have asked my opinion upon the subject, I feel bound to tell you that nothing which I have hitherto heard or read upon the question, has convinced me that Scripture is opposed to the marriage of a widower with his deceased Wife's Sister. The whole matter, in my judgment, turns upon this, and unless it could be satisfactorily proved that the Word of God condemns such marriages, I cannot see the wisdom or propriety with which human laws can forbid them.

"The practical operation of the existing law in this country, so far as my experience goes, is unquestionably bad. Persons are frequently driven to evade the law by a course which involves injury to others; whilst those who have a juster sense of what is due to the authorities that

be, feel themselves aggrieved by a statute which prohibits what the Bible allows. I do not believe that the effect of the proposed alteration of the law would be materially to increase the number of such marriages; but I am persuaded that it would be an amazing relief to the consciences of many, in whose sentiment I concur, that the present state of the law is oppressive and unauthorised by God's Word."

The REV. J. B. OWEN, Incumbent of Bilston, and the REV. J. C. MILLER, Rector of St. Martin's, Birmingham, gave similar testimony on the Scriptural part of the question, and described, in eloquent terms, the social evils of the present system among the poor, at a most important and crowded meeting on the subject, at Birmingham. See "Birmingham Journal" of January 18, 1851.

The REV. J. GARBETT, Rector of St. George's, Birmingham, and Rural Dean, says, in answer to the question: "Are you of opinion that there is any prohibition in Scripture against such marriages?"

"No; I am quite satisfied of the contrary."

To a similar question the REV. R. C. JENKINS, Perpetual Curate of Christ Church, Turnham Green, and Rural Dean, replies:

"I think there is none whatever."

The REV. J. HATCHARD, Vicar of St. Andrew's, Plymouth, and the REV. F. CLOSE, of Cheltenham, express a similar opinion.

The JEWISH RABBI writes in reply to a similar question : "It is not only not considered as 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;" and "according to Rabbinical authorities, such marriage is considered proper and even laudable; and where young children are left by the deceased wife, such marriage is allowed to take place within a shorter period from the wife's death than would otherwise be permitted."

The celebrated DR. CHALMERS'S words are as follows :

"In verse 18, the prohibition is only against marrying a Wife's Sister during the life of the first wife, which of itself implies a liberty to marry the sister after her death." (Daily Scripture Readings.)

DR. BUNTING, the head of the Methodists, says : "That the enactments of the Levitical law are entirely misrepresented when applied in condemnation of the case first mentioned, was the decided judgment of Mr. Wesley, and that judgment he strongly and repeatedly expressed in two incidental criticisms recorded by him in his published journals."

The Dissenters are all but unanimous on the subject.

The REV. W. W. CHAMPNEYS, the Rector of White-chapel, says, February 15, 1849 :

"In the midst of my always-pressing work in this immense parish, I can only give a hasty and brief view of my opinion on the subject; still my view is, to me, clear and decided.

"1. I assume that, in point of nearness, the relationship

of a brother to his deceased brother's widow, is the same as that of a man to his deceased Wife's Sister. Two brothers are successively married to the same woman, in the one case; and the same man to two sisters in succession, in the second.

"2. I assume that God would not *command* anything immoral.—'Because of the hardness of men's hearts,' He did indeed *allow* divorce then, for reasons which are not allowed under the better dispensation of the Gospel; but He never *commanded*, even under the peculiar law of the Jews, anything immoral. Yet He *did* command (for the keeping inheritances in families, and so preserving the genealogy correct) the man to marry his brother's widow: that is, one woman to marry two brothers. This proves to me that there is no such *relationship* in His view between persons so connected as to forbid marriage.

"3. There being thus no *moral* evil in such a connection as the marriage of a man with his deceased Wife's Sister, we see obviously that it would be very *EXPEDIENT*: second marriages are seldom happy to the children of the former marriage. A second wife cannot feel as a mother. She may love her husband as a husband, and will look with *some* regard on that husband's children, but can seldom either feel or act in a motherly way towards them. There is not only *no* regard felt towards the first wife, but a jealous feeling springs up when she is alluded to, in many minds. This, however, must necessarily be less likely to arise when the second wife is sister of the former, than in any other almost conceivable instance. Who can look at the motherless children so tenderly as the sister of their departed mother? Who so likely to bear with their little waywardness: because she loves them as the sister

of that one who is no more, and who saw those children when they were under that mother's care?

"It appears to me, therefore, that first, as Scripture shows that there is nothing immoral in such a connection—and secondly, as it is obvious that much evil would be prevented—many poor children saved from misery and ruin by having that person over them who, in a majority of instances, would be the next best substitute for a mother, my own mind is led to believe that the law of man ought to tally, in this respect, with the law of God.

"I believe that many an unhappy marriage would be prevented, by such marriages being allowed. We should have 'injuncta' less frequently coupled with 'Noverca,' and both among rich and poor much sin (for it *is* sin to break even man's law as long as it *is* man's law) kept away."

The REV. THOMAS DALE, Vicar of St. Pancras, and Canon Residentiary of St. Paul's, says, March 6, 1849:

"So far as my parochial experience extends, the prohibition of marriage with a deceased Wife's Sister operates far more to the promotion than to the prevention of crime. Among the lower classes, cohabitation without marriage is almost invariably the result; while the few conscientious persons who are deterred by the law from forming such a connection are precisely those to whom it would be a benefit.

"Were the prohibition founded on Scripture, we ought, at whatever sacrifice, to obey God rather than man; but I cannot see the expediency of a law, which, having no such sanction, is observed only by the scrupulous, evaded by the wealthy, and defied or disregarded by the poor."

The REV. J. H. GURNEY, Rector of St. Mary's, Marylebone, says, March 7, 1849:

"The number of persons probably affected in a whole generation among the upper classes is comparatively inconsiderable—the number of persons, I mean, who *would* marry a Sister-in-law, but for a prohibiting law.

"But lower down, it affects tens of thousands of widowers. It is almost always desirable, that the man left with a young family, *there*, should marry again. Very often he must have a female in the house before his wife is buried, to take care of the youngest children. Upon whom can he reckon often but a Sister-in-law, in an hour like that? What so fit as that she should stay on with him, if there be no impediment? When she has got almost a mother's place in the affections of the children, it seems cruel to turn her away. Yet she cannot stay with comfort or propriety, when things have resumed their usual course except as the second wife. 'That she must not be,' says the law; '*she* must turn out, and a chance stranger must take her place.' If I were a demagogue, wanting to rouse the passions of the working classes against the injustice of the rich man's legislation, I would not wish for a better topic. The laws may *look* equal, but the inequality, from total difference of circumstances, is very great indeed. If the matter were broached in an assembly of working men, of perfectly sober habits and well-regulated minds, wishing as anxiously as Lords and Commons to do right before God and man, I have no notion that one hand in fifty would be held up for the law as it is."

The HON. and REV. H. MONTAGUE VILLIERS, Rector of St. George's, Bloomsbury, and Canon Residentiary of St. Paul's, says, March 9, 1849 :

"I cannot perceive that it is forbidden in the word of God ; on the contrary, the limitation of Leviticus xviii. 18, seems to be a sanctioning to marry a Sister of a Wife when *deceased*. I am decidedly of opinion, that the repeal of the present law, while it may partially, and very partially, affect the habits of society among the upper classes, will remove a barrier to marriage which now exists, but which I do not believe God ever set up. It will prevent much immorality among the poor, relieve many a burdened conscience, and tend to the increase of happiness amongst large numbers of our fellow-countrymen."

The REV. WALTER FARQUHAR HOOK, D.D., Vicar of Leeds, says, April 2, 1849 :

"People in general do not consider such marriages improper. They cannot be proved to be improper by Scripture. The question is, therefore, one of expediency, and my experience as a Parochial Minister induces me to think the measure expedient.

"In the upper classes of society, a Sister-in-law may live with a Widower, and no scandal arise. He can secure in her a kind friend for his children.

"This is scarcely possible with respect to the poor, as any one who is acquainted with their habitations and habits will at once perceive.

"Yet when a poor man has lost his Wife, whatever may be his feelings, he is almost compelled to replace her as soon as he can. To him the Wife is not only the companion, but the nurse of his children, and the servant-of-

all-work in the house. If a Step-Mother is then necessary, where are the children so likely to find one who will regard them with affection, and treat them with kindness, as in the Sister of their Mother, whom from early years they have known and loved ?

"On these grounds, if ever a Convocation be called, and I be elected one of the Proctors, I shall move for an alteration, in this regard, in the Table of Kindred and Affinity. Until this be the case, I shall be glad to see such marriages legalised by the Civil Rite."

These marriages are not only allowed, but highly approved of in all Protestant countries but this ; and though the Greek Church, and the Church of Rome, forbid them as a matter of discipline, they do not believe them to be forbidden by God.

40,870	persons petitioned for the legalisation
	of these marriages, in 1849.
108,011	in 1850, and
167,676	in 1851. In the last year above 7000
	of the petitioners were females.
<hr/>	
Total 316,557	
<hr/>	

Each succeeding year, and every discussion in Parliament, produce fresh admissions, that the present restriction is not founded on the only ground upon which it could be justified, the Word of God.

And its practical effects are such as might be expected from any deviation from that law.

A very brief enquiry of a few weeks, in a population near Birmingham, containing about half-a-million of souls, shows 625 cases of these marriages, of which

165 were before the prohibitory act of 1835.

93 from 1835 to 1840, or 24 per annum.

150 from 1840 to 1845, or 30 per annum.

173 from 1845 to 1850, or 35 per annum.

41 in 1850 alone, and

3 in the beginning of 1851.

625

Similar enquiries in other parts, agricultural and commercial, show similar results.

The question is clearly, therefore, not whether these marriages shall take place, for they are rapidly increasing, but whether or not they shall have the sanction of the law.

Disobedience to even a bad law is wrong; but it is also wrong to continue the attempt of 1835, to enforce a law which is not sanctioned by Scripture, and which, by its continual infraction among respectable persons, produces lax views in general of the marriage tie.

The Bishop of Lichfield and the other Commissioners unanimously report, that the Act has failed.

It is clearly therefore a question of time, how soon this, the most desirable of second marriages, shall have that sanction from Parliament, which Scripture and reason alike demand.

The opinions above quoted are those of a very small proportion of that "large number of excellent persons," whom the Archbishop of Canterbury described as being in favour of Marriage with a deceased Wife's Sister.

LETTERS

OF

SEVERAL DISTINGUISHED MEMBERS

OF THE

BENCH OF BISHOPS,

ON THE SUBJECT OF

MARRIAGE

WITH A

DECEASED WIFE'S SISTER.

WITH

Remarks

BY

GEORGE A. CROWDER.

Second Edition.

LONDON:

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FLEET STREET.

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INTRODUCTION.

THE object of this Publication is to show conclusively, by reference to the highest Ecclesiastical authorities in this country, *that there is no objection on religious or moral grounds to a marriage with a deceased Wife's Sister.*

About five years ago I was professionally employed to promote the measure which is the subject of the following Correspondence, and which subsequently, under the auspices of Lord Wharncliffe in the House of Lords, and of Lord Francis Egerton in the House of Commons, attracted a considerable share of public attention. That measure had for its object, to remove by distinct legislative enactment the doubts which had so long existed as to the validity of "Marriage with a deceased Wife's Sister," and to declare such marriage thenceforth valid.

The statutes which gave rise to those doubts were passed in the reign of Henry VIII., and originated

in the desire of that unscrupulous monarch to get rid of his wife Catherine, in order that he might substitute Anna Boleyn in her stead. In two of those statutes (viz. the 25th Hen. VIII. c. 22, and 28th Hen. VIII. c. 7) the marriage in question is, amongst others, declared voidable by process in the Ecclesiastical Court; but a subsequent statute (the 32d Hen. VIII.) declares, "*that all persons are lawful to marry that be not prohibited by God's law to marry;*" and again, "*that no reservation or prohibition (God's law except) shall trouble or impeach any marriage without the Levitical degrees:*" thus proclaiming, in the most unequivocal terms, that no other marriages were intended to be prohibited by the statute than those which are prohibited by the law of God. The question, therefore, still remains, whether marriage with a deceased wife's sister is prohibited by "*God's law,*" which (according to Lord Coke) is, for this purpose, synonymous with "*the Levitical degrees;*"* and if such a marriage, upon examination, should prove to be "*without the Levitical degrees,*" and consequently "*not contrary to God's law,*" it follows that, according to the

* The words of Lord Coke are these: — "For by the statute of 32d Hen. VIII. c. 38, it is declared that all persons be lawful (that is, may lawfully marry) that be not prohibited by God's law to marry; that is to say, that be not prohibited by the Levitical degrees."

express meaning and intention of the Legislature, such a marriage is valid and unimpeachable.

The effect of the Acts of Henry was to make such marriages *not absolutely void*, but *only voidable*, by means of process in the Ecclesiastical Courts, instituted by some party interested, during the coverture.

The Act of 5th and 6th Will. IV. c. 54 (1835), the last Act upon the subject, simply declares that all such marriages as were within the "*prohibited degrees of affinity,*" and which had been solemnized prior to a given day, should be valid; and that all those solemnized *after* that day should be, not *voidable* as before, but *absolutely void*. The Act nowhere declares what marriages are to be considered within "*the prohibited degrees.*" There can, however, be no doubt that the framers of the Statute intended to include under this expression those marriages, *and those alone*, which are "*prohibited by God's law,*" and which were declared to be prohibited, on that account, by the Statutes of Henry VIII.

The most eminent lawyers have differed as to the true legal construction of the Acts of Henry, coupled with a subsequent Act of Mary in regard to marriage with a deceased wife's sister; but our Courts of Law have decided that such a marriage must be deemed *legally* impeachable, because it is one of those which are specifically

enumerated in the Statutes of the 25th and 28th of Henry VIII. as being "*prohibited by God's law.*" Now although it is said that an Act of Parliament is omnipotent, it cannot be gravely maintained that its power is sufficient to make *that* to be a fact which is not one. If the Acts of Henry VIII. had merely declared this or that class of marriages to be illegal, nobody could have doubted that such a declaration would have made them so; but if these Acts have declared any class of Marriages to be prohibited by God's law which is *not* prohibited by it, it is submitted that such a declaration cannot bring that class of marriages within the number of those which are really prohibited by the word of God, and consequently that such a class of marriages is not in fact prohibited by the law of this country, inasmuch as the Statute of 32 Henry VIII., which is still in full force, expressly declares, as I have already stated, that "all persons be lawful (*i. e.* may lawfully marry) *that be not prohibited by God's law to marry,*" and that "*no reservation or prohibition, God's law except, shall trouble or impeach any marriage without the Levitical degrees.*"

Let us inquire how the *fact* stands in the case before us? The words of the Levitical code on the subject of this particular marriage are apparently too plain and clear to admit of any serious doubt as to their proper interpretation.

They are as follows:—

LEV. ch. xviii. v. 18: "Neither shalt thou take a wife *to her sister to vex her,* to uncover her nakedness *beside* the other, *in her lifetime.*"

At the period when Moses was legislating, polygamy was common among the Jews. The example of Jacob, who had been induced to marry two sisters at once, and the peace of whose family had been embittered by their jealousies, was doubtless present to the mind of the legislator, and to prevent similar results in other families, he forbade such marriages in future.

Michaelis, whose learning and acuteness are universally acknowledged, thus alludes to this verse, in his "Commentaries on the Laws of Moses:"—"Marriage," he says, "with a *deceased* wife's sister he (Moses) *permits*, but prohibits, on the other hand, the marrying *two sisters at once.* The words of the law are very clear,—'Thou shalt not take a wife to her sister to be her rival, &c. along with her in her lifetime.'

This is doubtless the natural interpretation of the Scriptural text; and though it had been the policy of the Popes at all times to multiply the number of prohibitions, in order to reap the fruits of them by means of dispensations, and they had therefore included the deceased wife's sister, as they did cousins to the sixth and seventh degree, and even spiritual relations (as godfathers

and godmothers were called), it is pretty evident that so manifest a departure from the true construction of Scripture would never have been sanctioned by the Legislature, after the country became Protestant, had not the schemes of the arbitrary monarch then on the throne made it necessary to his unholy purpose. Few persons, however, take the trouble to investigate such subjects until they have a personal interest in doing so, and as Archbishop Parker in his Table (which, however, has no legal authority) adopted the interpretation which Henry had chosen to put upon the divine law, it came, in process of time, to be the generally received notion, that marriage with a *deceased* wife's sister is included in the list of marriages prohibited by Moses.

Such being the state of public opinion, or rather of public prejudice, upon this part of the subject, when my attention was originally directed to it, I thought that the first step should be to remove, if possible, this palpable error, and to place the Scriptural bearings of the question upon their true footing, as on this manifestly depended the *true legal* construction of the Acts of Parliament. Moreover, my clients, several of whom were Clergymen, would have shrunk from prosecuting their object, if they could have entertained a rational doubt as to the injunctions of Scripture; and as they knew that the vulgar error which

prevailed was calculated to produce an unfair bias upon the public mind, they were anxious to take the most effective means of setting at rest any doubts as to the interpretation of the divine law, before they applied to Parliament to authorise such marriages. This led me to address a letter to each of the Bishops, and also to a number of the Clergy of every rank in their profession, soliciting their opinion upon the policy of continuing a restriction (supposing one to exist) on such marriages, and especially requesting the expression of their sentiments upon the construction of the divine law in reference to them.

The greater portion of the Bishops to whom I addressed myself did not think fit to return me any answer; some few vouchsafed me a simple acknowledgment of the receipt of my communication, but declined to give a specific answer to my question; a few others expressed opinions adverse to the measure in general, but upon grounds wholly independent of Scripture,—on which latter point I had especially requested their sentiments. I had, however, the satisfaction of receiving from some, and those of distinguished eminence, not only in their profession, but in every department of literature, such unequivocal testimony upon the point, as, coupled with the silence of others, must, I think, be deemed conclusive. There is therefore reason to

hope, that no impartial reader will hereafter dispute the proposition, that (to use the language of the Bishop of Llandaff,) "*there is no religious or moral objection to marriage with a deceased wife's sister.*" Now, if this proposition be sound, what becomes of the alleged prohibition of this marriage contained in the statutes of Henry VIII.? That prohibition avowedly proceeds upon the assumption that the marriage in question is one of those denounced by the Levitical code—nay, the alleged Levitical prohibition is the sole ground assigned for the Statutory prohibition, the meaning and purpose of which is explained by the declaration "that no marriage shall be troubled or impeached which is *without* the Levitical degrees."

Lord Denman, in a late case, which was most elaborately argued (*The Queen v. O'Connell*), held that almost any course of practice, or current of authority, ought to be disregarded, *if proved to have originated in error*; and in the application of that principle to this particular case, another learned person*, whose superior legal attainments

* Mr. Justice Erle, of whose opinion, written shortly before his elevation to the Bench, the following is a copy:—

"I incline to think that the marriage with a sister of a deceased wife is valid. It is objected, that the question turns on the intention of Parliament in using the expression "prohibited degrees" in the 5th and 6th William IV. c. 54. It appears that the degree in question, and much more distant degrees, had

have, by his recent elevation to the bench, under very remarkable circumstances, been so distinctly recognized, entirely concurs.

been supposed to be prohibited before the time of Henry VIII.

"In 1563, Archbishop Parker, and in 1603, the Convocation, and in 1605, the King, confirming their constitutions; and from that time the Ecclesiastical Courts, which alone have direct cognizance of the question, have included the degree in question among the prohibited degrees.

"Therefore, when the 5th and 6th William IV. passed, there was a known class called the prohibited degrees; the statute does not define or alter the class, but adopts it; and then changes the result from voidable to void. As there was a defined class known by the name of prohibited degrees, the intention to refer to that class must be presumed from the use of the name.

"As the statute applied to a known state of law then administered in the Ecclesiastical Courts, and left it as to the degrees unaltered, it would be taken to have confirmed it. But the answer is, that, by the 32d Henry VIII. c. 38, all marriages are enacted to be lawful unless prohibited by God's law; that the marriage in question is certainly not prohibited thereby, but, on the contrary, is approved of; that the false assumption of a prohibition in God's law, in the 25th and 28th Henry VIII., is superseded by the subsequent statute of the 32d Henry VIII., which, in its application, requires the Judge to ascertain what is prohibited by God's law, not what is erroneously supposed to be so.

"That the statute of Queen Mary declares most forcibly that the degree in question was not prohibited, which is the latest statute on the subject, and therefore most binding.

"That neither the opinion of Archbishop Parker, nor the constitutions of a Convocation, nor any series of Decisions in the Ecclesiastical Courts, are of the slightest avail against an Act of Parliament, and that therefore the degree in question, in 1835, was not prohibited, though erroneously supposed to be so.

It appeared to some of the parties interested, that the reasoning since adopted by these learned Judges was unanswerable, and that an appeal to a Court of Law might have superseded the necessity of an application to Parliament; but the decision of the Courts having hitherto taken a contrary direction, the result seemed problematical; and an application to the Legislature was therefore resolved on.

Lord Wharncliffe, who first, after the most anxious consideration of the question in all its bearings, proposed a measure of relief to the House of Lords in 1841, was prevented by the

That as the 5th and 6th William IV. did not alter the law as to the degrees themselves, the question is to be considered as it would have been before that Act passed.

“That centuries of mistake on the validity of marriages *per verba de presenti* did not make them valid; so centuries of mistake as to the invalidity of the marriages in question will not render them invalid.

“This opinion rests on the point that the marriages in question are not prohibited by God’s law, and on the statement respecting that law which is made in the case, and the books referred to therein. The point is clearly stated in *Harrison v. Burwell*, (Vaughan’s Reports, 240,) where the Levitical law as to marrying a husband’s brother or a wife’s sister is stated to be not prohibitory, though assumed to be so in England; and he concludes, ‘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.’

“ W. ERLE.

“3, Paper Buildings, Temple,
“ July 20, 1844.”

sudden dissolution of Parliament from doing more than laying a Bill upon the table.

Lord Francis Egerton, in the next session of Parliament, took charge of the measure, and moved, in the House of Commons, for leave to bring in a Bill similar to that which had been before presented by Lord Wharncliffe to the Upper House: the motion was lost by a majority of 123 to 100.

The parties, however, whose domestic happiness is so deeply involved in the question, being persuaded that, on the score alike of religion, morality, social expediency, and law, they have right on their side, and taking example from the success of the Jews’ Disabilities Bill, and many others, which at first met with no support, yet eventually prevailed by the simple force of reason and justice, are resolved to persevere in their efforts to obtain redress at the hands of the Legislature, and they feel convinced that, sooner or later, a measure of such obvious justice and expediency, having the sanction of some of the highest and best authorities in the kingdom, will be carried, in spite of the prejudices which still exist in some quarters against it.

Actuated by these feelings, and encouraged by these hopes, the promoters of this measure are preparing to make another application to Parliament, and have requested me, as a preliminary

step, to give to the public the opinions, on the true exposition of the *divine law*, of those eminent authorities whose testimony forms the subject of the following pages; and thus, at once and for ever, to remove the groundless prejudice which has hitherto prevailed against "marriage with a *deceased* wife's sister," on the supposition that it is "*prohibited by the word of God.*"

GEORGE A. CROWDER.

Sept. 1845.

LETTERS,

&c.

It is almost needless to say, that no portion of the following Correspondence was originally designed for the press. My own share of it was invariably written in the hurry of business, and dispatched as it was written, without even the opportunity of verbal correction. I would willingly, therefore, have excluded it altogether from the series; but in some cases the entire letters which I wrote, and in others extracts from them, have been found necessary to make certain expressions or allusions in those of my correspondents intelligible. I hope, however, that I am not fairly chargeable with having troubled my readers with any portions of my own letters which I could properly have omitted. For those portions which I have been compelled to introduce, I claim that

degree of indulgence which is usually granted to persons whose correspondence is unexpectedly but unavoidably brought before the public eye.

Having, through the medium of a friend, transmitted to the Archbishop of Canterbury two pamphlets upon this subject for his perusal, I addressed his Grace by letter, of which the following is a copy :—

To the Archbishop of Canterbury.

31st January, 1840.

MY LORD,

About a fortnight ago I took the liberty of forwarding to your Grace two Pamphlets*, which have been recently published, on the subject of the Marriage Act. I did so at the request of several gentlemen who feel aggrieved by the operation of the existing law, which prohibits a marriage with a deceased wife's sister, and who have associated themselves together, in the hope of drawing the attention of the Legislature once more to the subject. It appears to us that there is nothing in the divine law opposed to such marriages, and that on moral grounds there are strong reasons for sanctioning them; but as the public in general are impressed with a belief that the

* The Pamphlets alluded to were, "Summary of Objections to the Doctrine that a Marriage with the Sister of a Deceased Wife is contrary to Law, Religion, or Morality;" and "Considerations on the state of the Law regarding Marriages with a deceased Wife's Sister, by H. R. Reynolds, Jun. Barrister-at-Law." London: Longman and Co.

existing prohibition is founded on the Levitical law, and a considerable prejudice has thus been created against such unions, we are anxious, before any step is taken in Parliament, to ascertain your Grace's sentiments on the question,—assured that any measure having the sanction of your high authority, and based on truth, would overcome all prejudice, and eventually meet approbation from all enlightened minds. On the other hand, if your Grace's sentiments on that important subject are at variance with our own, it is equally essential that we should know them before we embark in an attempt which would, in that case, of course be deprived of your Grace's active support.

Under these circumstances I venture to solicit the favour of an interview with your Grace, at any time and place which you will do me the honour to appoint.

I have the honour to be, &c.

GEORGE A. CROWDER.

In answer to this his Grace wrote as follows :—

Lambeth, Feb. 1st, 1840.

SIR,

That part of the Marriage Act to which, as you state, objections were made, was resolved on after mature consideration, and repeated discussions on the subject.

I do not, therefore, see any advantage that could result from your conferring with me. It perhaps would answer your purpose better to see my Vicar-General, Dr. Nicholl, who, I am certain, would willingly listen to any statements you may wish to make.

I remain, &c.

W. CANTUAR.

G. A. Crowder, Esq.

In the month of August following I addressed his Grace again as follows:—

20th August, 1840.

My LORD ARCHBISHOP,

Since I last had the honour of addressing your Grace on the subject of the existing law, which prohibits marriage with a *deceased* Wife's Sister, another pamphlet* has been written on the subject, by a Clergyman, whose reasoning appears so conclusive on the Scriptural part of the question, that the Committee on whose behalf I am acting have desired me to lay it before your Grace, with an earnest entreaty that it may receive your serious attention.

I am further instructed *to solicit the expression of your Grace's opinion, as the head of the Church, upon the true construction of the Scriptures* upon the points to which the accompanying pamphlet addresses itself; as, whatever may be your Grace's feeling as to the expediency of the proposed alteration of the law, in a political point of view, it is apprehended *that the prohibition cannot be justified under the divine law*; and, if so, it is essential that this truth should have the sanction of your Grace's high authority.

I have the honour to be, &c.

GEORGE A. CROWDER.

*The Lord Archbishop of Canterbury,
&c. &c. &c.*

To this I received the following answer:—

* "Observations on the Prohibition of Marriage in certain Cases of Relationship by Affinity. L. and G. Seeley, Fleet Street."

Lambeth, August 24, 1840.

SIR,

The enactment which declares any marriage with a deceased Wife's Sister to be null and void, was fully discussed and considered when the last Marriage Act was passed. It had my entire concurrence; and I have since seen no reason to alter the opinion on which, after looking at the question in every point of view, I then felt it my duty to act.

I remain, sir, &c.

W. CANTUAR.

G. A. Crowder, Esq.

It will here be observed, that although I had expressly solicited his Grace's opinion upon the Scriptural part of the question, and had distinctly asserted "that the prohibition could not be justified under the Divine law," *no allusion is made in his Grace's answer to that particular branch of my inquiry!* The inference seems obvious, that his Grace could not deny the interpretation put by us upon the words of Scripture. It was, however, better, if possible, to leave nothing to inference upon so vital a point, and I accordingly wrote again, *entreating a specific answer upon it*, as follows:—

27th August, 1840.

MY LORD ARCHBISHOP,

I am requested by the parties interested to express their deep regret that the arguments contained in the several

papers which they have through me transmitted to your Grace, on the subject of the Marriage Act, should not have impressed your Grace's mind with the views which they themselves entertain; but I am instructed at the same time to express their hope, that your Grace will not refuse them *an explicit declaration of your opinion upon that part of the question ONLY which depends upon the divine command.* I am thoroughly persuaded, from the character and conduct of the parties, some of whom are Clergymen, *that they would not, even under the sanction of the National Law, contract such marriages, if there existed a doubt in their minds as to the legality of them under the divine law;* it is therefore of the first importance to them that the religious part of the question should be placed beyond all dispute, if there be really no ground for objecting to such marriages in that respect, and that the justice of retaining the existing restrictions, on the ground of expediency alone, should be fairly discussed upon its merits.

To give your Grace an idea of the view taken of this subject by many enlightened persons having no personal interest in the question, I have the honour to inclose the copy of a Petition*, signed in less than five weeks, in a

* The following is a copy of the Petition alluded to, which was eventually signed by upwards of 500 Clergymen of the Church of England in active duty in all parts of the country:—

The humble Petition of the undersigned Clergymen of the Church of England—

Sheweth,

That, in the opinion of your petitioners, the existing law, which prohibits marriages between a widower and his deceased

very limited district, by 100 Clergymen in active duty, whose names, rank in their profession, and addresses, are annexed to it; and I submit to your Grace, that the testimony of persons, many of whom, from their opportunities of

wife's sister, is an inexpedient law, and ought to be repealed, for the following reasons:—

1st, That there is no divine command to be found in the Scriptures either directly or indirectly prohibiting such inmarriages.

2dly, That there is no consanguinity or kindred between the parties, which makes such marriages undesirable, in a physical point of view, or which disqualifies the parties, according to any of the received notions of mankind upon such subjects.

3dly, That it seems to your petitioners natural, for a widower, who finds in his wife's sister congenial habits, feelings, and temper, to regard her as the most fitting substitute for the wife whom he has lost.

4thly, That in many instances no person is so well qualified to discharge the duties of the deceased towards her surviving children, as the sister, who is already endeared to them by the ties of affection and kindred,—who, in most instances, has acquired, as their aunt, a certain degree of influence over them, and who can, therefore, exercise the necessary control of a step-mother, without incurring the odium, or exciting the jealousy, which her authority, however leniently exercised by a stranger, usually creates.

5thly, That among the poorer classes, a prohibition, so much at variance with natural impulses, has a direct immoral tendency, by inducing some parties to cohabit together without marriage; and by leaving it in the power of others, who go through the ceremony of marriage, to deny its validity, when it suits their purpose.

Your petitioners therefore humbly pray, that your Lordships will take the subject of the existing law relating to Marriage into your early consideration, with a view to such an alteration thereof as to your Lordships shall seem meet.

And your Petitioners shall ever pray, &c.

practical observation, must be well qualified to form an opinion, is deserving of some weight.

I have the honour to be, &c.

GEORGE A. CROWDER.

His Grace the Lord Archbishop of Canterbury.

This last appeal produced no answer; but his Grace's silence, when viewed in connection with his two letters, can scarcely be regarded in any other light than as a tacit admission that his objections were not founded upon Scripture.

Each of the Bishops was addressed by a Circular, in the name of my firm, of which the following is a copy:—

Circular to the other Archbishops and Bishops.

14th May, 1840.

MY LORD,

Inclosed we have the honour to send to your Lordship a short Statement* of the grounds upon which an application

* MARRIAGE ACT, (5th and 6th William IV., Ch. 54,) commonly called "LORD LYNDHURST'S ACT."

Reasons in support of an Application to the Legislature for an Act declaring "That Marriages with a Deceased Wife's Sister are not within the Prohibited Degrees, and shall therefore be valid."

1st,—That the decisions of our Courts against the validity of such Marriages are manifestly founded upon an erroneous construction of the Levitical Code, which expressly confines the prohibition to the Marriage of a Wife's Sister "IN HER

is about to be made to Parliament for an alteration in the existing Marriage Law; and as the success of such an appli-

LIFE-TIME." The words of LEVITICUS are, "Neither shalt thou take a wife to her sister, TO VEX HER, to uncover her nakedness, BESIDE THE OTHER IN HER LIFE-TIME."—Lev. ch. xviii. v. 18.

The long-exploded prohibitions of the Canon Law against Marriages between Cousins as far as the seventh degree, and between Spiritual Relations, such as Sponsors and Godchildren, were founded upon the same error; and those prohibitions were at one time so far extended by the English Law, that, according to Lord Coke, there might have been a Divorce, because a man had been GODFATHER at Baptism or Confirmation to his WIFE'S COUSIN!!

2dly,—That there is no blood relationship, or "kin," between the parties, and therefore no PHYSICAL ground for the prohibition.

3rdly,—That the similarity of person, feelings, or habits, frequently points out the Sister as the most natural successor of a deceased Wife, while she is almost invariably the fittest person to take charge of the motherless Children, who, under her care, are rarely exposed to the proverbial harshness and injustice of a Stepmother.

4thly,—That if there be any truth in the last proposition, no mere conventional prohibition can stifle the feelings of nature, or do more than partially discourage the practice which it is designed to PREVENT.

5thly,—That past experience, of which abundant proofs will be adduced before Parliament, shews, beyond all doubt, the practical inefficacy of the existing law, as a PROHIBITION.

6thly,—That the consequence is, among the lower classes especially, extensive demoralization; it having become common, since the passing of the act above referred to, for men to go through the ceremony of marriage with a deceased Wife's Sister, and, when it suits their purpose, to deny its legality, and to repudiate its obligations. The Parochial Clergy will bear

cation must in a great measure depend upon the opinion entertained of its expediency, in a moral point of view, by

testimony to the truth of this statement. The effects, too, have been, and will be more widely, felt in the administration of the Poor Laws.

7thly,—That the construction of the law upon this important subject admits of serious doubts amongst our most experienced Lawyers. By some it is considered that it works a personal disqualification between the parties, which neither time, nor place, nor circumstance, can cure; whilst others, of equally high authority, are of opinion that domicile in a foreign country, where no such prohibition exists, will remedy the defect; and others, again, conceive that the mere celebration of the Marriage in such a country is sufficient. The INEVITABLE RESULT is, that such Marriages, even among the higher and middling classes, have been very numerous, and that thus the legitimacy of many innocent children, and the validity of numberless titles, have been, and will be, called into question.

8thly,—That there is no rational ground for the objection, that the power to contract a valid marriage with a deceased Wife's Sister would encourage PRACTICAL immorality between the Husband and the Sister. In the numerous countries where such Marriages are legal, no result of this kind has followed. The universal abhorrence with which Adultery of this description is regarded, is a sufficient prevention of the crime, and may, perhaps, be the real cause of its infrequency; but if the alteration now proposed could be expected to have any operation in this particular, it would rather be the reverse of that suggested; for no man, however devoid of principle, or regardless of his honour, is utterly indifferent to that of his Wife; and the man who might contract an attachment for his Wife's Sister would, therefore, be less likely to attempt her seduction, if he looked forward to the possibility of one day making her his Wife. The existing state of the Law throws around her no such protection. A man who could DELIBERATELY, in his Wife's life-time, contemplate the

the Dignitaries of the Church, the numerous parties interested in the question are extremely anxious that it should have your Lordship's favourable consideration, and would feel deeply indebted for any communication which your Lordship might make through us upon the subject.

The question is one so deeply affecting the happiness of individuals, and *the security of property**, and having so

seduction of her Sister, would not be deterred from his purpose by the prohibition of an Act of Parliament, the breach of which involves no punishment.

It is, therefore, lastly, submitted to every thinking Member of the Legislature, that the natural inclinations of a large and afflicted body of the Community—the happiness and welfare of numerous Children—the honour of many virtuous Women, and the expediency of preventing doubts as to the Titles to extensive Properties—call aloud for some immediate alteration in the existing Law, and point out the legalization of the Marriages in question as the surest remedy for the evils created by it.

This question is ably treated in a recent Pamphlet, entitled, "Considerations on the State of the Law regarding Marriages with a Deceased Wife's Sister, by a Barrister of the Middle Temple." Longman and Co. 1840.

* The following Petition, signed as will be seen by nearly 80 of the most eminent Solicitors in London, is a sufficient proof of the accuracy of this assertion, so far as regards the operation of the existing law on property.

To the Right Honourable the Lords Spiritual and Temporal of the United Kingdom of Great Britain and Ireland, in Parliament assembled:—The humble Petition of the undersigned Attornies and Solicitors—

Sheweth,

That the effect of the existing law, which prohibits marriage within certain degrees of affinity, admits of serious doubts, as

extensive an influence upon public morals, that we trust we shall be excused for the liberty we have taken in thus addressing your Lordship at so early a stage of the proceeding.

We have the honour to be, &c.

CROWDER AND MAYNARD.

To this application I do not recollect having received any answer, except a short communication from the Archbishop of Dublin, expressing his approval of the proposed measure; but after addressing several letters to the Bishop of London, and having an interview with him at Fulham, *at which I failed in eliciting from him any expression of opinion on the religious part of the ques-*

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 5th and 6th William IV. chap. 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 titles to numerous estates upon an insecure footing.

Your petitioners therefore humbly pray, that your Lordships will take the subject into your early consideration, and adopt

tion, I received the following letter from his Lordship.

such measures for the amelioration of the law in this particular as to your lordships may seem meet.

And your Petitioners will ever pray, &c.

Tenant and Harrison.	E. J. Lawford.
Teesdale, Symes, and Weston.	Baxendale, Tatham, and Co.
Few, Hamilton, and Few.	Bayley and Janson.
Frere, Foster, and Co.	Gregson and Kewell.
Bourdillon and Sons.	Crowder and Maynard.
Amory, Sewell, and Moores.	Bolton and Merriman.
Lyon, Barnes, and Ellis.	Potter and Collingridge.
Karslake and Crealock.	Sweet, Suttons, and Co.
Roy, Blunt, Duncan, and Co.	Adlington, Gregory, and Co.
Clarke, Fynmore, and Fladgate.	William Vizard.
Bell and Steward.	W. and S. Cotton.
Farrer and Co.	G. Fraser.
White, Blake, and Co.	T. and C. Hall.
Wharton and Ford.	J. and S. Pearce, and Bolger.
Delmar and Wynne.	Bicknell, Roberts, and Co.
Le Blancs and Cook.	James Leman.
Chisholme, Hall, and Gibson.	Lake and Walker.
Holme, Loftus, and Young.	Whitmore, Roumieu, and Co.
Wilde, Rees, and Co.	William Yatman.
B. Blundell.	Brundrett, Randall, and Co.
King, Robinson, and Ouvry.	R. S. Palmer.
R. Maugham.	Pemberton, Crawley, and Co.
Lane and Prideaux.	Capron and Co.
Richards, Clarke, and Clarke.	J. H. Benbow.
Taylor, Sharpe, Field, and Co.	White and Borrett.
Austen and Hobson.	Blower and Vizard.
W. Witham.	Bridges and Mason.
Heathcote and Holman.	J. Maberly.
Thomas Metcalfe.	Cameron and Booty.
Clayton and Scott.	J. and W. Lowe.
Martineau, Malton, and Co.	Oddie, Forster, and Lumley.
William Tooke.	C. W. Scott.
Currie and Woodgate.	Charles Jones.
Thompson, Field, and Co.	Chatfield, Wingate, and Hart.
C. Whishaw.	Druce and Sons.
Powell, Broderips, and Wilde.	John Gregson.
Meredith and Reeve.	John Jenkins.
J. Coverdale.	Morris and Sons.
Kinderley, Denton, and Co.	

Petitions to the same effect were signed by many hundreds of Provincial Solicitors throughout the Country.

Fulham, 24th July, 1840.

SIR,

When I had the pleasure of seeing you here, I stated to you very fully the reasons which prevented me from expressing to you individually my opinion on the question to which your letter refers, and said that it was a matter respecting which it would be proper that the Bishops should consult together, in case any legislative measure should be in contemplation. I also pointed out to you what appeared to me to be the proper method of proceeding on your part; and I have nothing to add to the observations which I made on that occasion.

I remain, &c.

C. J. LONDON.

G. A. Crowder, Esq.

If I rightly recollect what passed at the interview to which his Lordship alludes, it was as follows. I stated, that I appealed to his Lordship on behalf of my clients, some of whom resided within his diocese, and others of whom were performing the duties of clergymen within it, for his opinion, as that of their diocesan and natural adviser in such matters, on the lawfulness, *in a Scriptural sense*, of the marriage which they desired to contract. This he refused to give me, on the ground that it was unfair to attack the Bench of Bishops in detail, upon a question which they ought to meet upon and discuss in conclave; and I think he expressed his opinion, that the proper course, in such a matter, was for the Peer or

Member of Parliament, who might originate the measure, to communicate with the Bishops as a body on the subject of it.

Although I could comprehend that the subject was not a very palatable one to several of the Bishops, I thought it possible that, in some instances at least, their silence might have been occasioned by the pressure of other engagements during the sitting of Parliament. I addressed, therefore, to them all a second Circular, in the following terms, shortly after the close of the session:—

20th August, 1841.

MY LORD BISHOP,

On the 14th of May last, we had the honour of sending to your Lordship a printed "Statement of Reasons" for altering the existing law which prohibits marriage with a deceased wife's sister, and we afterwards took the liberty of forwarding to your Lordship *several Pamphlets** upon the subject.

We are now instructed to forward to your Lordship another Pamphlet†, which has just been published by a Clergyman, with an earnest entreaty that your Lordship will give it an attentive perusal, and favour us with your Lordship's opinion upon at least *that portion of the work*

* The Pamphlets here alluded to were those first mentioned, viz.: "Summary of Objections, &c." and "Considerations, &c."

† This was the pamphlet entitled "Observations," &c.

which addresses itself to the SCRIPTURAL PART of the question.

The Committee were perhaps too sanguine in expecting that, during the bustle of the session, they could receive from your Lordship any expression of opinion upon so grave a question; but as the recess will now give your Lordship more leisure, they hope they will not be deemed unreasonable in asking for an early communication.

We have the honour to be, &c.

CROWDER AND MAYNARD.

This second effort produced the several communications which follow:—

From the Archbishop of York.

The Archbishop of York begs to thank Messrs. Crowder and Maynard for their obliging attention in sending him a copy of "Observations on the Prohibitions of Marriage in certain Cases of Relationship by Affinity."

Nuneham Park, Aug: 21st, 1840.

From the Bishop of Salisbury.

Palace, Salisbury, Aug. 21st, 1840.

GENTLEMEN,

Though I do not usually deem it necessary to acknowledge the different pamphlets which are continually forwarded to me on a variety of subjects, I beg to inform you that I have received those to which you refer in your letter of to-day; but that I do not think it at all probable that I shall give

you my opinion on a matter which it appears to be the intention of some parties to bring under the Legislature.

I remain, &c.

E. SARUM.

Messrs. Crowder & Maynard.

From the Bishop of Hereford.

Hereford, August 21, 1840.

GENTLEMEN,

I beg to acknowledge the receipt of your letter, and of the Pamphlet which accompanied it; but I must decline making any remarks on the subject of which it treats.

I am, gentlemen, &c.

T. HEREFORD.

Messrs. Crowder & Maynard.

From the Bishop of Durham.

The Bishop of Durham presents his compliments to Messrs. Crowder and Maynard, and begs leave to deny the right of any strangers whatsoever to call upon him for his opinion on any subject, but especially upon a question of very grave nature, which is likely to be submitted to the consideration of Parliament.

Auckland Castle, Aug. 22, 1840.

From the Bishop of Lincoln.

Boston, August 25, 1840.

GENTLEMEN,

I beg leave to acknowledge the receipt of your letter of the 20th instant. Having been absent from home during the last week, I have not yet received the pamphlet to which

you allude. I shall not fail to give it, as well as the other pamphlets which the Committee on whose behalf you are acting have done me the honour to send me, an attentive perusal; but I must reserve the expression of my opinion, either on the Scriptural or any other part of the question, till it is brought, as I suppose that it will be, before Parliament.

I have the honour to be, &c.

J. LINCOLN.

Messrs. Crowder & Maynard.

In reply to this I wrote as follows:—

To the Bishop of Lincoln.

Saturday, 29th August, 1840.

MY LORD,

We have had the honour to receive your Lordship's letter of the 25th instant.

In ours, to which it is an answer, we did not presume to ask any pledge as to the line of conduct which your Lordship might pursue in Parliament with reference to the question to which we ventured to direct your Lordship's attention; all we asked for was your Lordship's opinion, as one of the heads of the Church, upon the construction of that part of *Scripture* upon which the restriction against marriage with a deceased wife's sister has been supposed to be founded; and we again respectfully submit to your Lordship, that parties whose happiness in life, and the welfare of whose infant children, are at this moment suffering from the operation of the existing law, may fairly claim to have the question divested of any vulgar prejudice which now hangs about it, in consequence of the erroneous interpretation originally put upon the Levitical code. Upon these grounds

we venture to entreat your Lordship to reconsider the matter before you withhold from parties so deeply aggrieved the expression of your Lordship's sentiments on that branch of the subject which is peculiarly within your province, and which leaves untouched the question of political or social expediency, upon which your Lordship may hereafter be called upon to express your opinion as a Peer of Parliament. We have the honour to inclose, for your Lordship's perusal, the copy of a Petition which, in the course of five weeks, received the signatures of 100 Clergymen, whose names, rank in their profession, and addresses, are annexed to it. Many of these gentlemen are, doubtless, known to your Lordship, at least by reputation. We are told that they are highly respectable, and have no personal interest in the question, though we cannot absolutely vouch for this, as we are only known to them as the representatives of persons aggrieved by a law which the petitioners deem unscriptural, unjust, oppressive, and inexpedient.

Under the sanction of such testimony, we feel that we may approach your Lordship with some confidence as to the result of your mature consideration of the subject.

We have the honour to be, &c.

CROWDER AND MAYNARD.

The Lord Bishop of Lincoln.

To this I received the following reply:—

From the Bishop of Lincoln.

Willingham, Market Rasen,
Sept. 9, 1840.

GENTLEMEN,

After the best consideration which I have been able to give to your letter of August 29, and to the documents

D

which accompanied it, I still remain of opinion that all which the parties aggrieved by the present state of the law can claim of me is, that when the question of the repeal of the law prohibiting marriage with a deceased Wife's Sister is brought before the Legislature, I shall, in my place in Parliament, declare my sentiments upon it. *That* I shall be prepared to do.

I have the honour, &c.

J. LINCOLN.

Messrs. Crowder & Maynard.

From the Archbishop of Armagh.

Armagh, Sept. 4, 1840.

GENTLEMEN,

I beg to acknowledge the receipt of your letter of the 20th ult., accompanied by a pamphlet, entitled "Observations on the Prohibition of Marriages in certain Cases of Relationship by Affinity." I have read the pamphlet with some attention, and I conceive it to be a temperate statement of the arguments which it professes to bring forward for altering the existing law of marriage.

I must, however, candidly avow, that these arguments appear not to me to afford sufficient grounds for effecting so important a change in the law as that which is contemplated. I cannot be expected, nor have I leisure, to enter into a laboured discussion of the question, either in its moral or religious bearings. My opinion, I conceive, will be more fitly stated in conference with my Episcopal brethren, or in my place in Parliament, if the matter should be brought before the Legislature. Meanwhile, I will only say, that I apprehend that the legal power of marrying a deceased Wife's Sister would tend to disturb, or to throw a suspicion upon,

that unreserved intimacy which now harmlessly and profitably exists between persons so nearly connected as the husband and the wife's sister.

I am, gentlemen, &c.

JOHN G. ARMAGH.

Messrs. Crowder & Maynard.

I had written to the Archbishop of Dublin, with whom I had had a previous correspondence, a separate letter, and the following are copies of that letter and of his Grace's reply:—

To the Archbishop of Dublin.

20th August, 1840.

MY LORD ARCHBISHOP,

Although I am aware, from the communication which your Grace did me the honour to make to me some months back, on the Prohibition of Marriage with a deceased Wife's Sister, that your Grace needs no further proof of the anti-scriptural character of that prohibition, I feel it my duty to forward to your Grace a Pamphlet* which has been recently written by a Clergyman, who appears to me to have placed the matter in a very striking point of view, and to have excluded the possibility of any other construction than that for which we are contending.

And as it is essential to the success of the object in which we are engaged that any works which we circulate should defy the most rigid scrutiny, your Grace would confer on those for whom I am acting, as well as on myself, a very great obligation by favouring me with your opinion upon the

* "Observations," &c.

Pamphlet in question, and pointing out any parts of it which may appear to your Grace weak or inconclusive.

I have the honour to be, &c.

GEO. A. CROWDER.

The Lord Archbishop of Dublin, &c. &c. &c.

The Archbishop's Answer.

Dublin, 14th September, 1840.

SIR,

The Pamphlet you have sent me is ingenious and well written, and I see nothing in it to object to.

I shall be ready to support the measure if brought forward when I am in Parliament, but I sit only alternate sessions.

I am even more convinced, however, that your best if not only prospect of success is in taking your stand on the broad principle of non-interference; *i. e.* that a *clear* and *adequate* case of public advantage is to be made out to justify any restriction.

As it is, I think you will find four in five mistake the real question; *i. e.* they will consider the question to be whether it be an *advisable sort of marriage*.

But ask the same persons whether they think it advisable for a man to marry his servant girl, or a woman young enough to be his daughter, or old enough to be his mother, &c.; and when they answer No, ask them whether they would have a *law* to *prohibit* such marriages, and I think they would then perceive that it is absurd to keep men in leading strings, and to take away all right of private judgment wherever it is possible for men to judge wrong. Let your opponents be called upon to bear the *burden of proof*, *i. e.* to show some manifest and considerable *public benefit* promoted, or *evil prevented*, by the restriction.

I believe there is but one that they pretend to show, *viz.* the supposed scandal that would arise from a sister-in-law keeping a widower's house, and they assume that this scandal will or will not exist according as the marriage is or is not legal. Now this is all a chimera. The *law* has no power to create or prevent scandal of that kind—it is *fashion* or *public opinion*; *e. g.* a man, whether married or single, cannot, without scandal, take a young married woman, not his sister, to live alone in the house with him as his sister, yet their marriage would be unlawful.

In the present case, whatever scandal ever could arise would be rather *promoted* by the prohibition; for, as long as they were free to marry, it would be inferred by all charitable people that if they wished to *cohabit* they *would* marry, but, if prohibited, they would be exposed to temptation to illicit intercourse.

I am, sir, &c.

RICHARD DUBLIN.

George A. Crowder, Esq.

In answer to a letter which I wrote to the Archbishop, on the 23d of April, 1841, asking his Grace's further assistance and advice, I received the following letter, which, in my humble judgment, treats the subject in a most statesmanlike and conclusive manner.

From the Archbishop of Dublin.

Dublin, 30th April, 1841.

SIR,

You are at liberty to refer to me as approving of the abolition of the restriction on marriage to which you allude.

As no clear and strong case has been made out of important advantage to the public from such restriction, I take my stand on the broad general principle, that *every restriction is an evil in itself*—that political liberty (as Paley observes) consists in a man's being subject to no restriction that is not counterbalanced by a greater amount of public advantage: that the general rule accordingly should be to let every one do as he pleases; the burden of proof lying upon the advocates of any restriction to show its necessity.

This principle, when stated generally, most persons will, I think, admit. They would acknowledge that a man ought not to be deprived of his liberty of action, merely on the ground that he might not make that use of his liberty which all or the majority of his neighbours might think the best, but merely when some serious positive detriment was likely to arise to the public or to his neighbours.

In particular instances, however, men are sometimes apt to lose sight of this principle. In the present case, for example, if, although several worthy and respectable persons (as is undoubtedly the fact) approve of the marriage in question, a considerable majority (as is probably the case) disapprove of them, some might think the fair and natural result should be, that those marriages should be prohibited on the ground that the minority should give way to the majority.

Now I should consider this a case of oppression of the minority by the majority, which is no less unjust than the converse case.

I should say, that the fair and natural result would be (supposing always no clear case of public inconvenience to be made out), that parties should be left at liberty. Those who approve of such a marriage would then be free to con-

tract it when they might think proper; those who disapprove of it might abstain from it.

What may be called a meddling system of Government amounts practically to a most intolerable tyranny. If the legislature of a country consisted of the most disinterested and public-spirited men, but who should think it their duty to compel, by law, every individual to do every thing that might seem to *them* best, and to prohibit every one from taking any step which they might not think advisable, it would be found, I believe, that even the government of selfish oppressors would be preferred to this.

And yet I believe, in the present case, the question appears to many men's minds to be, whether the marriage with a deceased Wife's Sister be or be not *desirable*. Suppose it decided in the negative: most people also would decide against the desirableness of a marriage when there was a very great disparity of years, or of station, or where there is a taint of insanity or other hereditary disease, or where there is no adequate provision for children, &c. Yet how intolerable would be a system of legislation which, in these and similar cases, should undertake to prescribe the conduct of every individual! A society so governed would resemble those children who, to insure their straight and perfect growth, are from their infancy so swaddled, bandaged, and ironed, as effectually to prevent the full development and free use of all their members. I have been proceeding all along on the supposition that no sufficiently strong case has been made out to justify the departure in this matter from the general rule of non-restriction.

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 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 they were 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 young married woman with another man.

Although, therefore, there would probably be many persons who would think the marriages in question undesirable, I cannot think that any reasonable man, *keeping in view the general principle I set out with*, can think that a sufficiently strong case has been made out for legislative interference with individual freedom of action.

I am, sir, &c.

RICHARD DUBLIN.

G. A. Crowder, Esq.

Soon after Lord Wharncliffe had consented to take charge of the measure in the House of Lords, I sent another Circular to the Bishops, which produced, if I recollect rightly, the following solitary answer:—

From the Bishop of Rochester.

Bromley Palace, 21st August, 1841.

GENTLEMEN,

The objections I entertain to any relaxation in the law respecting marriage with the sister of a Deceased Wife, are founded upon the embarrassments, jealousies, and inconveniences which it would create in domestic life. Although the existing law may affect a few individuals, it is upon the whole conducive to the peace and happiness of society. I shall, therefore, consider it to be my duty to oppose any Bill that may be brought into Parliament upon this subject.

I have the honour to be, &c.

G. ROCHESTER.

Messrs. Crowder & Maynard.

To this I sent the following reply:

To the Bishop of Rochester.

27th August, 1841.

MY LORD,

We have the honour to acknowledge the receipt of your Lordship's letter of the 21st ult., and while we are requested by the gentlemen interested in this question to express their grateful thanks to your Lordship, for the very candid manner in which you have declared your sentiments upon the subject, we are directed to express also the deep regret they feel at discovering that your Lordship's sentiments are so unfavourable to the view they have themselves taken of it. We are not vain enough to suppose that anything we can advance will effect a change in your Lordship's mind, supposing it to be made up on this subject; but the kind manner in which your Lordship has condescended to state

your objections on the matter in question, and the influence which your Lordship's opinions are likely to exercise over many other Peers, emboldens us to trespass once more for a few moments on your Lordship's attention.

We trust we are not drawing an improper inference from your Lordship's letter, when we conclude *that you do not conceive that the Scriptures prohibit marriage with a deceased Wife's Sister*, but that you object to this class of marriages solely on the ground of their tendency to produce domestic discomfort, and that your Lordship considers this objection against them sufficient, under a conviction that the present state of the law on this subject affects but a "few individuals." Now, we assure your Lordship that the present restrictions press very severely on numerous persons of great respectability. The justice of imposing these restrictions we admit is not affected by the numbers of those who suffer under them, but we submit to your Lordship that the inexpediency of retaining restrictions which are really based upon an erroneous interpretation of the Scriptures, and which so vitally affect the happiness of a large body of respectable persons, can hardly be considered doubtful.

The number of marriages within what are called the prohibited degrees, which have been contracted by persons in the middle and lower classes since the passing of Lord Lyndhurst's Act in 1835, is very great, notwithstanding the prohibition; and your Lordship will doubtless be of opinion that the continuance of such a state of things has a direct tendency to produce contempt for the laws in the first of these classes, and immorality in the second.

We earnestly entreat your Lordship's consideration of these circumstances in weighing the comparative evils of

retaining or withdrawing the existing restrictions, and we are not entirely without a hope that they may appear of so much weight, as to induce you to think that it might be more wise to risk the small amount of possible domestic inconvenience which it may be conceived would result from the permission to contract these marriages, than to persevere in maintaining a law which has no warrant in Scripture, which is in consequence perpetually infringed, and which, under such circumstances, can scarcely be infringed without producing a very injurious effect upon the moral character of the parties infringing it.

The Petition* (of which, and of the signatures to it, we have now the honour to enclose your Lordship a copy,) will show your Lordship that the sentiments which we have expressed are not the offspring of mere personal interest on the part of our clients, or of those partial feelings on our own part which arise from our connection with the parties interested. The Petition in question was circulated during five weeks in a very limited neighbourhood by a Clergyman wholly unknown to us, except by name and reputation, who neither has, nor ever can have, a personal interest in the question. We are not aware that any one of those who signed it are personally interested, and their names, addresses, and rank in their profession, will doubtless satisfy your Lordship that many of them, at least, are peculiarly qualified by their education, acquirements, and opportunities of extensive practical observation, to form a sound judgment on such a subject.

We have the honour to be, &c.

CROWDER AND MAYNARD.

The Lord Bishop of Rochester.

* The Clerical Petition.

This letter produced no reply.

At about the same period I had the correspondence with the Bishop of Llandaff which follows:—

15th April, 1841.

MY LORD BISHOP,

I am sure that your Lordship will be glad to hear that Lord Wharncliffe has consented to call the attention of the House of Lords, soon after the recess, to the state of the Marriage Law, as connected with those prohibitions which are not sanctioned by Scripture.

There will be a great number of petitions very respectably signed, both by the clergy and the laity, from various parts of the kingdom; and your Lordship would confer a great obligation on those who are so deeply interested in the result of the application, by permitting me to place some of them in your hands.

I hope, and believe, that since I first directed my attention to this subject, a considerable alteration has taken place in the public opinion concerning it.

Lord Wharncliffe will be in town about the 24th, and as it is of the last importance that he should not take a single step in this delicate matter until all his supporters are in town, I shall esteem it a great favour if your Lordship will kindly inform me during what period he may rely on your ability to attend.

It is most unfortunate that we should lose the assistance of the Archbishop of Dublin, who does not sit this session, but from the kind interest he has expressed in the question, I have little doubt that he will exercise his influence with such peers as have confidence in his judgment, to induce them to give us their support.

May I entreat, my Lord, that you will also kindly exert your powerful influence in support of a measure which has Scripture as well as moral right and justice on its side, and the passing of which would confer happiness upon so many who are now most undeservedly deprived of it.

I have the honour to be, &c.

GEORGE A. CROWDER.

I send the 4th Edition of the Pamphlet, entitled "Observations," &c. which has been considerably enlarged, and also a revised* Statement of Reasons, containing several additional grounds for an alteration of the law.

The Lord Bishop of Llandaff.

* The following is a copy of the Statement here alluded to:—
MARRIAGE ACT, 5th & 6th WM. IV., Cap. 54 (1835).

Statement of Reasons in support of an application to Parliament to repeal so much of this Act as prohibits Marriage with a *deceased Wife's Sister* or other person in a *more remote degree* of AFFINITY.

1st,—Because Marriage with a *deceased Wife's Sister* is nowhere forbidden in SCRIPTURE, the words in Leviticus (chap. xviii. ver. 18) being,—“Neither shalt thou take a Wife to her Sister, to vex her, to uncover her nakedness, beside the other *in her life-time* ;” which, it will be seen, expressly confine the prohibition of such a Marriage to the *life-time* of the Wife.

Note.—The Canon Law once actually prohibited Marriage between *Cousins* as far as the *seventh* degree, and between *Spiritual Relations*, such as *Sponsors* and *God-children*, upon the *supposed* authority of the Levitical Code; and to such an extent was this error carried, that, according to Lord Coke, a Divorce might have been obtained on the ground that the husband had stood *Godfather* to his *Wife's Cousin* !!

2dly,—Because there is no *consanguinity*, or blood relation-

From the Bishop of Llandaff.

Deanery, St. Paul's, 23d April, 1841.

SIR,

Having been out of town, I did not receive your letter with the accompanying Pamphlet till my return last night.

ship, between the parties, and therefore no *physical* ground for the prohibition.

3dly,—Because the similarity of person, feelings and habits, frequently points out the Sister as the most natural successor of a deceased Wife, while she is almost invariably the fittest person to take charge of the motherless children, who, under her care, are rarely exposed to the proverbial harshness and injustice of a stepmother.

4thly,—Because the experience of the last five years abundantly proves the inefficacy of a mere conventional prohibition to stifle the feelings of nature; the existing Law having barely served to *discourage* the practice which it was designed *entirely to prevent*.

5thly,—Because the existing Act is producing, among the Lower Classes, extensive demoralization; it having become common, since the passing of the Act, for men to go through the ceremony of Marriage with a deceased Wife's Sister, and, when it suits their purpose, to deny its legality and repudiate its obligations. The Parochial Clergy are bearing ample testimony to the truth of this statement in their Petitions to Parliament for a Repeal of the existing Law.

6thly,—Because the force of the prohibition, as applicable to Marriages of this kind *solemnized abroad*, admits of serious doubts amongst our most experienced Lawyers;—(some considering that it works a personal disqualification between the parties, which neither time, nor place, nor circumstances, can remove; while others, of equally high authority, are of opinion, that domicile, in any of the numerous countries where such Marriages are lawful, will remedy the defect; and others, again, conceive, that the mere celebration of the Marriage in

I will carefully peruse it, and I have little doubt that I shall be able to promise my support and co-operation in Parliament, especially as the measure is in the hands of Lord Wharncliffe.

such a country is sufficient;—)—and the consequence of these doubts has been, to make such Marriages, especially among the Middle Classes, very frequent. The inevitable result of such a state of things must be, that the legitimacy of the innocent offspring will, ere long, be called in question, their titles disputed, and their lives rendered *hateful to themselves* by the double scourge of *endless family litigation* and *indelible personal disgrace*.

7thly,—Because there is no rational ground for the objection, that the power to contract a valid Marriage with a deceased Wife's Sister would encourage *practical* immorality between the husband and the wife's sister. The universal abhorrence with which adultery of this description is regarded, has been found to operate *every where* as a sufficient prevention of the crime; and if any additional barrier were necessary, it would be found in the very alteration now proposed; for the man who might contract an attachment for his Wife's Sister would, assuredly, be less likely to attempt her seduction, if it were possible she might one day become his wife,—inasmuch as no man, however devoid of principle, or regardless of his own honour, is utterly indifferent to that of his wife. The Law, in its present state, leaves her without this protection; for it is absurd to suppose that he who could deliberately, in his wife's life-time, contemplate the seduction of her sister, would be deterred from his purpose by an Act of Parliament, prohibiting marriage with her after the wife's decease, the breach of which subjects him to no punishment.

8thly,—Because the only other plausible objection which has been urged against legalizing Marriage between a Widower and his deceased Wife's Sister, viz. the supposed scandal which would arise from her keeping his house and taking charge of his family, is equally untenable; since it would be inferred by

It is right, however, that I should state, that since our last communication I have been strongly inclined to prefer a general revisal of the prohibited degrees to the more partial correction you had in view. There are other cases which

all charitable persons, that, if the parties were free to marry, and wished to cohabit, *they would marry*,—and that, not marrying, *they could have no desire to cohabit*.

9thly,—Because, whilst neither the Christian religion, nor sound morals, nor social expediency, furnish any just ground for prohibiting Marriage with a deceased Wife's Sister, they afford still less for the prohibition of it with those who stand in more remote degrees of Affinity.

10thly,—Because, whilst one clause of the above mentioned Act *expressly* confirms all Marriages of this description celebrated *before* a given day, another clause (introduced after the Bill was presented to Parliament) prohibits similar Marriages solemnized *after* that day; thus, to a great extent, defeating the benevolent purpose of the Noble Lord who framed the Bill, by casting a *moral slur* upon those very unions to which the preceding enactment had given a *legal sanction*.

11thly,—Because Marriage in all these cases is permitted, either with or without dispensation, in almost every other Protestant as well as Roman Catholic country, without producing any ill effects, or diminishing in the slightest degree the freedom of domestic intercourse; and the continued existence of the restrictions upon these Marriages in our own Statute Book, is therefore a *standing reproach* upon the English Nation, proclaiming, as it does, to the whole world, that, in the opinion of the Legislature, the people of this country are less under the control of religious and moral principle than those of any other Christian country, and need restraints upon their conduct which are found to be unnecessary elsewhere.

12thly,—Because any restraints upon so sacred an institution as Marriage can be justified only by the express commands

seem to be equally deserving of relief, with that for which you are concerned, and that itself would be likely to experience more favour if a general amendment on some consistent principle were proposed, instead of relief to a particular case.

I shall be happy to take charge of any petition connected with this subject, especially one which prayed for a general revisal. I am sir, &c.

E. LLANDAFF.

George A. Crowder, Esq.

of Scripture, or the imperative calls of social expediency; neither of which can with any shadow of reason be pleaded in support of the prohibitions in question.

It is, therefore, confidently submitted to every thinking Member of the Legislature, that the natural and blameless inclinations of a large and afflicted body of the community,—the honour of many virtuous women,—the happiness and welfare of their innocent children,—the interest of morality,—and the expediency of preventing litigation between the nearest relatives,—call aloud for some immediate modification of the existing law, and point out legalization of the Marriages in question as the surest remedy for the evils complained of.

For more detailed reasoning on this important subject, see Pamphlets, entitled—

“Summary of Objections,” &c. London: Roworth and Sons. 1839.

“Considerations,” &c. By H. R. REYNOLDS, Jun. M.A. Barrister at Law. Fourth Edition. Longman and Co. 1840.

“Observations on the Prohibition of Marriage in certain cases of Relationship by Affinity.” Fourth Edition. L. and G. Seeley. 1841.

E

To the Bishop of Llandaff.

24th April, 1841.

MY LORD BISHOP,

I have had the honour to receive your Lordship's obliging letter of the 23d, and I hasten to assure your Lordship, that, although with a view of directing public attention to the subject, and giving it an interest, I have put forward most prominently the case of the deceased Wife's Sister, it was by no means the wish of those for whom I am acting to confine the repeal to that case, and your Lordship will perceive that we allude in our *last statement** generally to more remote cases of *affinity*.

There are two principles which have already served as the basis of our legislation upon the subject at different periods of our history, though both have been departed from simultaneously with their avowed adoption.

For example, the Acts of Henry VIII., which define the prohibited degrees, set out by declaring in express terms that all persons are lawful to marry who are without the Levitical degrees; yet the very same Acts embrace in their prohibitions cases manifestly not within the Levitical degrees. The principle there was to adopt the Levitical degrees, and the practice to depart from them.

Again, in 1835, the Legislature enacted that all marriages within the prohibited degrees of Affinity, previously solemnized, should be indissoluble; thus avowing the principle to be, that the Levitical degrees were not binding upon us

* The Statement here alluded to is that set forth in the last note.

as Christians, and that cases of Affinity ought not to be embraced in the prohibitions; yet by the same Act it was declared that all future marriages within the prohibited degrees, either of Affinity or Consanguinity, should be absolutely void.

I some time ago prepared the forms of two short Bills to meet either of these principles; one declaring that certain cases (to be defined) should no longer be deemed within the prohibited degrees, and the other declaring that those cases which were, by the Act of 1835, retrospectively sanctioned, should henceforth in like manner be deemed valid. The first form follows out the principle asserted by the Acts of Henry VIII.; the second, that recognised on the first clause of the Act of William IV.

I have the honour to be, &c.

G. A. CROWDER.

The Lord Bishop of Llandaff.

In the month of June following, his Lordship took charge of a petition bearing the signatures of a number of clergymen, in favour of an alteration in the law, but some expressions in his speech, as reported in the *Times*, were so ambiguous, that I called upon his Lordship, and expressed a hope that his opinion had undergone no alteration. Upon this he wrote the following explanatory letter:—

From the Bishop of Llandaff.

Deanery, St. Paul's, June 23d, 1841.

SIR,

As you infer from the brief report in the *Times* of what I said on presenting the Marriage Act Petition, that I de-

clared myself hostile to the measure, I can assure you that such was not the character of the few observations I then made.

I observed, that the Petition was probably entrusted to me, in consequence of my having declared without hesitation that the marriage of a Sister of a deceased Wife was not prohibited by the Levitical law. I went on to say, that neither did I regard it as forbidden by the law of nature, nor, indeed, as far as my experience went, was it condemned as a moral offence by public opinion in this country. Still, as many objections have been urged against any relaxation of the law in that particular, by the Right Reverend Prelate, the Bishop of London, whose opinions are deserving of the highest respect, I must not be considered as an advocate of the measure in presenting this petition. It was a measure connected with many interests of the deepest importance, and ought not to be adopted by the Legislature without the most mature deliberation.

Such, as far as I recollect, was the substance, and very nearly the language, of my observations, and you will allow me to say that they were in nowise inconsistent with the opinions I had previously expressed, either in writing or in conversation with yourself.

I am, sir, &c.

E. LLANDAFF.

G. A. Crowder, Esq.

To the Bishop of Llandaff.

12th February, 1842.

MY LORD BISHOP,

I am sure that the very kind interest which your Lordship has expressed in the success of any sound measure for

revising the present anomalous state of the Marriage Law, will make it gratifying to you to hear that the subject has been taken up by so able and influential a nobleman as Lord Francis Egerton. After mature consideration, he has expressed himself willing to introduce a Bill to the House of Commons, upon the principle of, if not identical with, that presented by Lord Wharncliffe to the House of Lords, during the last session.

May I entertain the hope that, if the Bill should reach the Upper House, supported, as it will then be, by more than one member of the Cabinet, it will receive your Lordship's powerful assistance?

If your Lordship would publicly state the sentiments you entertain on the subject, it would afford that moral countenance to Lord Francis Egerton, in the prosecution of his labours, which is all he can possibly want, and which I respectfully submit to your Lordship ought not to be withheld by eminent literary men whose opinions accord with his own.

I have the honour to be, &c.

G. A. CROWDER.

The Lord Bishop of Llandaff.

From the Bishop of Llandaff.

Offwell, near Honiton, 14th February, 1842.

SIR,

I am very glad to find that Lord Francis Egerton has undertaken the charge of introducing the Marriage Bill into the House of Commons; his character and abilities will certainly recommend it, and I think the measure more

likely to succeed in this way, than if it were first introduced in the Upper House.

I make no secret of my opinion, that there is no religious or moral objection to it, although I have not yet made up my mind whether, on the score of expediency, it is desirable. By moral, therefore, I mean any law of nature or morality universally binding. But many things which are in this sense lawful are not therefore expedient, being liable to modification, according to the habits, and opinions, and usages of different countries, to which we must be careful not to give unnecessary offence, or to subject them to any abrupt or violent change.

I remain, Sir, &c.

E. LLANDAFF.

George A. Crowder, Esq.

From the late Bishop of Meath.

Ardbranam, 2d March, 1842.

SIR,

I have received your note requesting me to express my opinion on the subject of the proposed revision of the prohibited degrees of affinity, &c.

My shortest mode of conveying this is to say that I have perused with great attention the Archbishop of Dublin's perspicuous observations on the subject, and that I entirely concur with His Grace's views.

I shall only add, that all persons who voted for the Act of Parliament which legalized such marriages of that description as had taken place—nay, all who had an opportunity of opposing that Act, and did not oppose it, must be regarded as subscribing to the declaration that these marriages were not in opposition to the word of God.

To suppose they had a different conviction would be to attribute to them a moral turpitude of which I cannot for a moment suppose them to have been guilty.

I am, sir, &c.

CHARLES MEATH.

Geo. A. Crowder, Esq.

REMARKS.

THE reflections which are naturally suggested by the correspondence and other documents referred to in the foregoing pages, would seem to be the following :—

1st.—That while the two Acts of Henry VIII. upon which the invalidity of marriage with a deceased Wife's Sister is founded, declare such a marriage by name to have been prohibited by the Levitical code, and therefore prohibit it, a later act of the same reign declares that such a marriage is *not* impeachable if it is not prohibited by the Levitical code.

2dly.—That the Act of 5th and 6th Wm. IV., chap. 54, although it declares that all marriages within the prohibited degrees shall thenceforth be not voidable only, as they had previously been,

but absolutely void *ab initio*, gives no definition of the words "prohibited degrees," but leaves them to be decided by the same test (the Levitical code), as was applied to them by the statutes of Henry VIII.

3dly.—That consequently if it can be shown that any particular class of marriages enumerated in the list prohibited by the statutes of Henry, is not *in fact* comprised in the prohibitions contained in the book of Leviticus, it follows that such marriages are not either void or voidable by the law of the land.

4thly.—That in the face of the direct, positive, and unequivocal declarations of the Archbishop of Dublin, and the Bishops of Llandaff and Meath, and of upwards of 500 Clergymen of the Church of England, which the foregoing pages disclose, coupled with the negative, but equally unequivocal testimony to the same purpose, afforded by the silence of the Archbishops of Canterbury and Armagh, and the Bishops of London, Lincoln, and Rochester, on the Scriptural part of the question, while all of them (except the Bishop of Lincoln) gave opinions against the measure on other grounds*, it is impossible any longer to

* The Bishop of London expressed an adverse opinion in his speech in the House of Lords, though in that speech he carefully abstained from declaring his opinion that such marriages are forbidden by Scripture.

doubt that marriage with the Sister of a *deceased* Wife is not prohibited by the Law of God.

5thly.—That if any additional testimony were wanting on this head of the subject, it would be found in the acquiescence of the whole bench of Bishops, in the provisions of the Statute of 5 & 6 Wm. IV., before referred to, which declares that all marriages within the prohibited degrees of affinity, as defined by the Acts of Henry VIII., should, if not impeached before the 31st day of August, 1835, be thereafter unimpeachable; for although by the same Statute the same class of marriages solemnized after that day are declared absolutely void *ab initio*, no Bishop could have reconciled it to his conscience to pronounce *that* to be lawful which the Almighty had declared unlawful. On a question of political or social expediency, the Bishops had an undoubted right to exercise their best discretion as Peers of the realm: assuming, therefore, that the word of God was silent on the question of this particular marriage, they were justified in dealing with it on political or social grounds, but if the law of God had already decided the question, they had no right to abrogate that law, or to suspend its operation for a single moment. It is clear, therefore, that those of the Bishops from whom I have not been fortunate enough to obtain direct answers, but who were members of the Legisla-

lature in 1835, have already committed themselves by a solemn act of legislation, to the opinion so decidedly expressed by their able colleague, the Bishop of Llandaff, “that there is no religious or moral objection to a marriage with a deceased Wife’s Sister.”

Now, as I verily believe that the objections entertained against this class of marriages by the great bulk of its conscientious opponents had their origin in the mistake which has so long and so generally prevailed, with regard to the nature of the Levitical injunction, it is not unreasonable to hope that by removing the ground of error upon which these objections mainly rest, very many of such opponents will cease to offer any resistance to the proposed alteration of the law. Such persons will, it is hoped, view the matter in the light suggested by the Archbishop of Dublin; they will consider, not whether such a marriage happens to square with their own tastes or feelings, but whether so strong a case of evil prevented, or good obtained by the continuance of the prohibition, has been, or can be made out, as to justify them in denouncing what God has manifestly permitted, and in thus depriving a large number of conscientious persons of the exercise of an innocent free will on a question so deeply affecting their happiness and the welfare of their children.

If the Scriptural ground is removed, the Bishops are, it is conceived, as regards this question, reduced to the ordinary level of other Peers, and as, from their habits of life and associations in general, they are perhaps less qualified than other individuals for judging wisely upon matters of general policy or social expediency, (apart from considerations of a Scriptural nature), it may not be too much to hope that other members of both Houses will receive with caution the honest, but still possibly mistaken sentiments of these learned personages, upon a question of such extensive political and social importance.

A Petition, signed by nearly 80 of the most eminent and influential Solicitors in the metropolis, has been incidentally inserted in these pages as explanatory of a paragraph in the correspondence. That petition does not of course presume to touch the religious grounds which have been supposed to affect the question. But assuming those grounds to be removed, and assuming, as I cannot help doing, that no class of men could have more accurate and extensive information, or be better qualified to exercise a sound judgment upon the questions with which that petition has dealt, it is submitted that the reasons urged by these petitioners are alone sufficient to call for an immediate alteration of the law.

The time has not arrived when the effects of

the Act of 5 and 6 Wm. IV. will be felt, but let that Act remain in operation until the issue of the numerous marriages solemnized in foreign countries where no such prohibition exists, come to claim their inheritances; and who can predict the amount of litigation and heart-burnings which that ill-advised statute will produce?

The generality of these marriages are of course solemnized with as little publicity as possible—it being naturally the object of those engaged in them to avoid observation; but in the present uncertain state of the law, their numbers are constantly increasing, both at home and abroad—among the rich and among the poor. In the humbler classes, the Wife's Sister is naturally looked to as her successor in the care of her children, and it is capable of easy proof that not hundreds, but thousands of such marriages have been contracted since the passing of the Act of 1835. In classes more elevated such marriages are by no means uncommon, and now that the prohibition of them is pretty generally known to have originated in a mistake, or, what is worse, in the deliberate fraud of a worthless tyrant, and it is also known that the highest legal opinions in the kingdom warrant the belief that the past decisions of the common law courts would, if again disputed, be overturned, it is reasonable to expect that marriages in so many instances congenial to

the tastes of the parties, and in almost all cases so conducive to the happiness of the surviving husband and his orphan children, will become still more common. Submission to the Divine Will would undoubtedly operate with all conscientious persons to prevent an act, however apparently innocent, if they could once believe that it was prohibited by the law of God; but remove that barrier, show them clearly that the Legislature, whilst professing to take Holy Scripture for its guide, has either wilfully, or by mistake, (it matters not which) put a false interpretation on the Mosaic injunction, and that the Divine Law has left them free to act in the matter as they think best; and they will require the strongest proof of its political necessity before they patiently submit to a restriction so deeply affecting their domestic happiness.

It is not the purpose of these pages to enter into an examination of the whole question in all its bearings, but as the *moral effect* of the prohibition is next in importance to its supposed connection with Scriptural authority, it may not be out of place to remind the reader that the Petitions of the clergy above referred to, in addition to the unequivocal declaration, "that there is no Divine command to be found in Scripture, either directly or indirectly, prohibiting such marriages,"—conclude by stating, with equal confidence, "that among the poorer classes, a prohi-

bition so much at variance with natural impulses, *has a direct immoral tendency*, by inducing some parties to cohabit together without marriage, and by leaving it in the power of others, who go through the ceremony of marriage, to deny its validity when it suits their purpose."

Marriage with a Deceased Wife's Sister.

FACTS AND OPINIONS

IN FAVOUR OF LEGALISING

MARRIAGE

WITH A DECEASED WIFE'S SISTER.

"CHAFIN, THAT HATH MARRIED TWO SISTERS, UPON HIS APPEAL FROM YOUR GRACE AND ME, HANGETH STILL BEFORE THE DELEGATES, AND, AS MUCH AS I CAN PERCEIVE, IS NOT LIKELY TO TAKE ANY GREAT HURT AT THEIR HANDS. I WOULD THEY WOULD DECREE IT WERE LAWFUL TO MARRY TWO SISTERS; SO SHOULD THE WORLD BE OUT OF DOUBT."—*Bishop Jewel, in a letter to Archbishop Parker, dated June, 1563. From the original in the Archbishopal Palace, Lambeth. [This opinion of Bishop Jewel was given TWO YEARS AFTER the adverse opinion so often quoted.]*

"IT IS NEVER POLITIC TO PROHIBIT BY LAW, THAT WHICH CERTAINLY WILL EXIST, WHETHER TOLERATED OR NOT."—*Letter of Lord Cranworth, "Times," 17th January, 1852.*

"It is difficult enough, at all times, by force of law to give a criminal character to acts in themselves indifferent, so as to secure the willing obedience of mankind; but when such acts are performed from a sense of duty and religious obligation, your laws become dead,—CONSCIENCE AND OPINION ARE BEYOND THE SPHERE OF YOUR LEGISLATION."—*Speech of the Earl of Aberdeen, February 28, 1851.*

"I THINK IT UNJUST AND UNWISE TO PROHIBIT BY LAW THAT WHICH YOU MEAN TO PERMIT IN PRACTICE."—*Speech of Lord Stanley, February 28, 1851.*

SIXTY-SIXTH THOUSAND.

PRINTED FOR

The Marriage Law Reform Association.

OFFICES, 26, PARLIAMENT STREET.

FACTS.

FACT I.
MARRIAGE with a deceased wife's sister is nowhere prohibited in EXPRESS WORDS of Scripture.

FACT II.
This marriage is NOWHERE prohibited by PLAIN AND NECESSARY INFERENCE from the words of Scripture, the case of a wife's sister being NOT PARALLEL to that of a brother's widow.

FACT III.
This marriage is EXPRESSLY MENTIONED in Lev. xviii. 18, and there the prohibition is limited to the LIFETIME of the wife.

FACT IV.
The JEWS, to whom the sacred oracles were given, have always understood the marriage to be PERMITTED by Lev. xviii. 18, and set a SPECIAL MARK of approbation on this marriage, by allowing it to take place, when there were young children, EARLIER than in ordinary cases.

FACT V.
The ROMAN CATHOLIC CHURCH does not regard this marriage as forbidden in Scripture.

FACT VI.
PROTESTANT DISSIDENTS regard the permission of this marriage as SCRIPTURAL and EXPEDIENT.

FACT VII.
This marriage MAY BE CELEBRATED by dispensation or otherwise, in almost every country in the world, EXCEPT ENGLAND AND IRELAND, and a few of the Cantons of Switzerland.

FACT VIII.
In NO COUNTRY has it been proved that the permission of this marriage has been attended with injurious consequences.

FACT IX.
The absolute prohibition of this marriage in England, is a RECENT INNOVATION, dating no more than SIXTEEN years back.

FACT X.
Before that period, there is no instance of a suit to annul such marriage, or punish the parties, ON THE GROUND OF RELIGION AND MORALITY.

FACT XI.
The Act of 1835 PURPOSELY AVOIDED touching on the question of what were the prohibited degrees, leaving that

important subject for FUTURE CONSIDERATION.

FACT XII.
This Act either renders valid, retrospectively, WICKED marriages, or it condemns, prospectively, INNOCENT ones.

FACT XIII.
This Act does NOT command the respect and obedience of society.

FACT XIV.
THOUSANDS of such marriages have been contracted; they are found in almost every town and neighbourhood in the kingdom.

FACT XV.
Society, almost without exception, regards such persons as RIGHTLY MARRIED, and WORTHY OF RESPECT, and in so doing CONDEMNS the law which renders their marriage void.

FACT XVI.
Numerous CLERGYMEN of the CHURCH OF ENGLAND have petitioned for the removal of this restriction.

FACT XVII.
Almost every person of note in THE CITY OF LONDON has petitioned to the same effect.

FACT XVIII.
Some of the most eminent JUDGES have voted for such a measure.

FACT XIX.
All the leading firms of SOLICITORS have petitioned against the existing law.

FACT XX.
Some of the most distinguished of the NOBILITY have voted for this measure.

FACT XXI.
A majority of the members of HER MAJESTY'S GOVERNMENT have voted for this measure.

FACT XXII.
Numerous PUBLIC MEETINGS have been held in the principal towns of England, almost UNANIMOUSLY advocating the removal of the prohibition.

FACT XXIII.
Under the Legacy Duty Act, a widow pays no duty—a child 1 per cent.—a cousin (ever so distant) 3 per cent.—but a wife's sister 10 per cent., because she is "A STRANGER IN BLOOD."

OPINIONS.

"The view which he had heard taken in that House, respecting the operation of Scripture, must after all be a mere matter of inference and construction; and applying himself to that view of the subject, he should say that such marriages as the Bill was intended to legalise WERE NOT PROHIBITED, but were TACITLY permitted by the words of the chapter which had been so often quoted.—He protested against the opinions expressed by those who contended that there existed any divine prohibition."—*Bishop of St. David's Speech.*

"This was an important subject, and if such a measure ought to be passed at all, it should be passed as soon as possible."—*Speech of Lord J. Russell.*

"Centuries of mistake as to the validity of the marriages in question, will not render them invalid."—*Mr. Justice Erle, in 1844.*

"The prohibition of taking two sisters was meant for the LIFETIME ONLY."—*Milton.*

"The context also seems to suggest a more literal interpretation, namely, the marrying of two sisters together.—This verse (Leviticus xviii. 18) seems not to contain a prohibition of it (viz. marriage with a deceased wife's sister).—Such restrictions as pride, covetousness, or HUMAN POLICY have superadded, do not seem to have proved beneficial to mankind."—*Scott.*

"In truth, I understand both this verse and the verse which immediately precedes it, as recognising the permission of polygamy to the Jews; but REGULATING it by a prohibition against having two wives who are in certain degrees of propinquity of kin to each other."—*Speech of the Bishop of Exeter.*

"With regard to the SCRIPTURAL ARGUMENT, it would ill become him to give a confident opinion upon it, when he found the Right Rev. Prelates having CONSIDERABLE DOUBT, AND NO SMALL DISCREPANCY AMONG THEMSELVES."—*Speech of Lord Brougham.*

"I have an amendment to move to the second clause; it is, 'That there be excepted from the operation of the Bill cases of MARRIAGE WITH THE SISTER OF A DECEASED WIFE, where there is a child or children under twelve years of age.' There can be no doubt that there are many cases in which it may be of ESSENTIAL IMPORTANCE both to the father and the children, that such a marriage

should be permitted."—*Speech of J. P. Plumptre, Esq., M.P., in 1835.*

"The amendment proposed by the honourable Member is one of very great importance; but I fear that, at this period of the session, it would be impossible to bestow upon it the consideration to which it is entitled. Perhaps the better course to adopt would be NOT TO INTERFERE WITH THE BILL, by persevering with this amendment, but to propose, NEXT SESSION, a short Act upon the subject to which it refers."—*Speech of Dr. Lushington, following Mr. Plumptre, 1835.*

"Is the marriage of a widower with his late wife's sister within the 'prohibited degrees?' In all frankness and honesty I am obliged to answer—no. It is interdicted neither by express veto, nor yet by implication. Canonical austerity is not to be identified with moral purity or matrimonial fidelity."—*Rev. Dr. Eadie, Glasgow.*

"It appears to me, therefore, that first, as Scripture shows that there is nothing immoral in such a connexion—and secondly, as it is obvious that much evil would be prevented—many poor children saved from misery and ruin by having that person over them who, in a majority of instances, would be the next best substitute for a mother, my own mind is led to believe that the law of man ought to tally in this respect with the law of God."—*Rev. Canon Champneys.*

"I raise no cavil at the translation of our Bibles. I stand on no argument from analogy, or 'parity of reasoning' whatever may be its force; and I fully admit that this marriage was not among the prohibitions of the Jewish code."—*Rev. Dr. Croly.*

"But has it never occurred to you, my dear Wynn, that this law is an ABOMINABLE RELIC OF ECCLESIASTICAL TYRANNY? Of all second marriages, I have no hesitation in saying that these are the most suitable, and likely to be the most frequent, if the law did not sometimes prevent them. It is quite monstrous, judges and lawyers speaking as they have done of late, upon this subject."—*Robert Southey.*

"I have never heard upon what principle of policy the law was made prohibiting the marriage of a man with his wife's sister, nor have I ever been able to conjecture any political inconvenience that

might have been found in such marriages, or to conceive of any moral turpitude in them."—*Dr. Benjamin Franklin.*

"I have no doubt that according to Leviticus xviii. 18 (Hebrew and English), marriage with a deceased wife's sister is permitted."—*Rev. Dr. McCaul.*

"As you have asked my opinion upon the subject, I feel bound to tell you that nothing which I have hitherto heard or read upon the question, has convinced me that Scripture is opposed to the marriage of a widower with his deceased wife's sister."—*Rev. R. Bickersteth.*

"Are you of opinion that there is any prohibition in Scripture against such marriages?"—"No; I am quite satisfied of the contrary."—*Evidence of Rev. J. Garbett.*

"People in general do not consider such marriages improper. They cannot be proved to be improper by Scripture. The question is, therefore, one of expediency, and my experience as a parochial minister induces me to think the measure expedient."—*Rev. Dr. Hook.*

"From all I have been able to learn on the question, 'whether a man may marry a deceased wife's sister,' my opinion is, that neither does Holy Scripture any where forbid it, nor ever did the Jews."—*Rev. Dr. (late Professor) Lee.*

"Were the prohibitions founded on Scripture, we ought at whatever sacrifice to obey God rather than man; but I cannot see the expediency of a law which, having no such sanction, is observed only by the scrupulous, evaded by the wealthy, and defied or disregarded by the poor."—*Rev. Canon Dale.*

"It is not only not considered as prohibited, but it is distinctly understood to be permitted; and on this point neither the divine law, nor the Rabbis, nor historical Judaism, leaves room for the least doubt."—*Evidence of Dr. Adler, the Chief Rabbi of the Jews of England.*

"This text, expressed in this manner, shows that it is not permitted to have as wives, two sisters at the same time, as Jacob had Rachel and Leah, but only in succession; and this is the sense which appears the most clear and the most probable."...."Analogy is not always a means of judging respecting positive laws."—*Calmet.*

"I cannot perceive that it is forbidden in the Word of God; on the contrary, the limitation of Leviticus xviii. 18, seems to be a sanctioning to marry a sister of a wife when deceased. I am decidedly of opinion that the repeal of the present law, while it may partially, and very partially, affect the habits of society, among the upper classes, will

remove a barrier to marriage which now exists, but which I do not believe God ever set up. It will prevent much immorality among the poor, relieve many a burdened conscience, and tend to the increase of happiness amongst large numbers of our fellow countrymen."—*Hon. and Rev. H. Montague Villiers.*

"He asked them to reflect that the parting request of many a dying wife was that the man should marry her sister, which was the best testimony to the feeling of woman in this matter. Such marriages were not repugnant to nature nor to Scripture; and if they did but look calmly at these facts, sure he was that the day was not far distant when the obnoxious law would be repealed."—*Speech of the Rev. J. C. Miller.*

"Within the meaning of Leviticus, and the constant practice of the commonwealth by the Jews, a man was prohibited not to marry his wife's sister, only during her life: after, he might—so the text is. 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, when first given."—*Chf. Jus. Vaughan.*

"As no clear and strong case has been made out of important advantage to the public from such restriction, I take my stand on the broad general principle that every restriction is an evil in itself—the burden of proof lying upon the advocates of any restriction to show its necessity."... "You are at liberty to refer to me as approving of the abolition of the restriction on marriage to which you allude."—*Archbp. Whately, in a letter to G. A. Crowder, Esq.*

"I speak advisedly when I say, that I come here prepared to offer my opinion that theologically it is correct that such marriages should take place; and I see no ground whatsoever on account of which such marriages may not be legalised."—*Evidence of Rev. J. Hatchard.*

"In the Indies—if a husband has lost his wife, he does not fail to marry her sister; and this is extremely natural, for his new consort becomes the mother of her sister's children, and not a cruel step-mother."—*Montesquieu.*

"Those who call themselves the friends of civil and religious liberty, ought to support a measure that sought to get rid of one of the most serious interferences with social liberty that existed under the English laws."—*Speech of Viscount Brackley.*

"What Moses declares of near kindred is explained by himself in the particulars, and what is not forbidden by a prohibitory law is permitted."—*Dr. Johnstone.*

"I admit that marriage with a wife's sister is not forbidden in Leviticus."—*Bishop of Lincoln.*

"Has never had occasion to observe, either in the middling or poorer classes, any injury or immorality arising from such marriages; never admonished any of those parties that they were acting in breach of the divine law, because never believed it. The great inducement to these marriages is, that the parties have a better opportunity than is generally afforded of being acquainted with each other's real character and disposition."—*Evidence of Rev. J. F. Denham, M.A., F.R.S.*

"Such marriages, I apprehend, are nearly as frequent as the circumstances which usually give rise to them. I have not known any social disadvantages attending them."—*Bishop M'Ivaine.*

"I do not know—I never heard of any social disadvantages attending such marriages of any description whatever; and am totally at a loss to conjecture what 'disadvantages' can be referred to."—*Rev. J. L. Pomroy.*

"As far as you know, the general moral feeling of the people would not be offended by a relaxation of the law, and a permission for these marriages to be had?"—"I know of no objection to it; I never met with a person who had an objection to it; I never met with a person out of Parliament who joined with the law, and took the same view which the Legislature does of these marriages."—*Evidence of R. Cobden, Esq., M.P.*

"'In her lifetime,' which seems plainly to imply that though a man was not permitted by the law of Moses to marry two sisters at the same time, yet he might marry the sister of a former wife who was dead: and so indeed it is understood by all the Jewish doctors. Some, however, think that since there is a prohibition, ver. 6, to marry a brother's wife, it is not to be thought Moses would permit to marry a wife's sister. But every one sees the two cases are not parallel."—*Dr. Jameson.*

"In 1835 a most important statute had been passed by that House, under somewhat peculiar circumstances, and he might also say, of haste and want of due deliberation, materially affecting a portion of the marriage laws of this country."—*Speech of Lord Francis Egerton (now Earl of Ellesmere), in the House of Commons.*

"In this case, the voice of Heaven was silent, and that of man had been given with a hesitation and confusion of utterance that deprived it of its due authority."—*Ibid.*

"That our Established Church should

select one point of the Canon law, and establish an arbitrary limit without giving any power of dispensation, was, he was sorry to say, a very great tyranny, and one which he felt convinced that the true principles of the Church of England did not sanction."—*Speech of R. Monckton Milnes, Esq., M.P.*

"It is remarkable, that while there is an express injunction against the marriage of a man with his brother's widow, there is no such prohibition against his marriage with his deceased wife's sister. In verse 18, the prohibition is only against marrying the wife's sister during the lifetime of the first wife, which of itself implies the liberty to marry her sister after her death."—*Rev. Dr. Chalmers.*

"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."—*Chief Justice Story.*

"Whence, I pray you, is this rigor of man against man, which GOD HAS NOT REQUIRED?—Who has given to men this power [of annulling or prohibiting marriage?] Be it, that they were holy men, and influenced by pious zeal: why should another's zeal infringe my liberty? Let any one be as zealous and as holy as he will, so that he does not injure his neighbour or rob him of his liberty.—Let them arm themselves with the divine law, and say, WHAT GOD HATH JOINED TOGETHER, LET NOT MAN PUT ASUNDER. The union of husband and wife is of divine right, which is binding, however contrary it may be to human laws, and the laws of men ought to yield to it without reserve. For if a man leaves father and mother to cleave to his wife, how much rather shall he trample under foot the contemptible and unjust laws of men, and cleave to his wife? And Pope, Bishop, or officer, if he dissolve any marriage contracted in opposition to merely human law, is Antichrist, a violator of nature, a traitor against the divine majesty; for that sentence still stands: WHAT GOD HATH JOINED, LET NOT MAN PUT ASUNDER.—Perish, therefore, those cursed traditions of men, which have been brought in only to multiply dangers, offences, and miseries in the Church."—*Luther.*

"His first duty was to ascertain whether there was anything in the Word of God which forbids the marrying of a widower with a sister of his deceased

wife. He looked carefully, he endeavoured earnestly to come at the truth, and he was perfectly convinced that there was nothing in the Scriptures which prohibited that act."—*Speech of R. Spooner, Esq., M.P.*

"I believe such marriages as you wish to make lawful, are already lawful, according to the letter and spirit of Holy Scripture; and I hope the civil and ecclesiastical law will speedily be made conformable to the Divine."—*Rev. F. Close.*

"My opinion of the law has long been, that it is an impolitic restriction."—*Archdeacon of Derby.*

"Moses does not prohibit marriage with the sister of a deceased wife."—*Rosenmüller.*

"'In her life time,' because when she was dead he might marry her sister."—*Menochius.*

"'In her life time,' This sufficiently indicates that he permitted it when the wife was dead, otherwise than in the case of two brothers."—*Jansenius.*

"Thou shalt not marry two sisters at the same time, as Jacob did Rachel and Leah, but there is nothing in this law that rendered it illegal to marry a sister-in-law when her sister was dead."—*Dr. Adam Clarke.*

"The meaning, therefore, is this: Thou shalt not take a woman as a wife at the same time with her sister; for when the wife was dead, it was allowed to marry her sister."—*Fagius.*

"Certainly, after the death of the wife, it was permitted to the husband to marry her sister, because she (the sister) is not among the other enumerated kindred of the wife."—*Rabbi Levi.*

"Both sides use various arguments to show what degrees are prohibited, from analogy with those forbidden in the law. But unless it be a manifest thing, and the inference altogether undeniable, it is something presumptuous, from mere analogy, to add to the divine law."—*Joannes Clericus.*

"That a law is found to produce no sensible good effect, is a sufficient reason for repealing it, as adverse to the rights of a free citizen, without demanding specific evidence of its bad effects."—*Dr. Paley.*

"The Bible, the Bible only, is the religion of Protestants. Whatsoever else they believe besides it, and the plain IRREFRAGABLE, INDUBITABLE, consequences of it, well may they hold it as a matter of opinion. I will take no man's liberty of judgment from him; neither shall any man take mine from me."—*Chillingworth.*

"The three grounds upon which the

petition proceeded were in perfect accordance with his own convictions, as he fully believed they were also with the mind of England, and the general sentiment of society, upon the subject to which the petition referred. The three points upon which the petition was especially grounded were these—first, that such marriage was not forbidden by the Word of God; second that there was no consanguinity or blood-relationship existing between the parties; and third, that such a marriage was wholly unobjectionable on moral considerations."—*Speech of Rev. J. B. Owen.*

"You are understood to state, that you are of opinion that, so far as the interpretation of Scripture goes, either in the Mosaic or Christian dispensation, there is nothing repugnant to these marriages?"—"There is nothing repugnant, in my opinion."—*Evidence of Rev. R. C. Jenkins.*

"The petition was probably entrusted to me in consequence of my having declared without hesitation that the marriage of a sister of a deceased wife was not prohibited by the Levitical law."—*The late Bishop of Llandaff.*

"I shall only add, that all persons who voted for the Act of Parliament which legalised such marriages of that description as had taken place,—nay, all who had an opportunity of opposing that Act, and did not oppose it,—must be regarded as subscribing to the declaration that these marriages were not in opposition to the Word of God."—*The late Bishop of Meath.*

"Without pursuing the subject further, I shall give it as my opinion, that the marriage in question is not against either nature or the law of God."—*Rev. T. Binney.*

"My opinion is certainly in favour of the relaxation of the law prohibiting the marriage of a widower to his late wife's sister."—*Chancellor Martin, of the Diocese of Exeter.*

"Seeing that it was not against the law of God—seeing the great social evils which arose from the restriction, and believing that there was no comparison between the social advantages and the social disadvantages arising from this cause, he should give the measure his cheerful assent."—*Speech of Earl of Arundel and Surrey.*

"The ancient Roman law permitted the marriage of two sisters in succession."—*Heineccius.*

"Bad laws are the worst sort of tyranny. In such a country as this, they are of all bad things the worst—worse by far than any where else; and they derive a peculiar malignity from the

wisdom and soundness of the rest of our institutions."—*Burke.*

"Are marriages of this description considered in Germany to be at all *contra bonos mores*?"—"Not at all. So far from their being considered *contra bonos mores*, the feeling of the people of Germany is undoubtedly in favour of such marriages." . . . "It frequently happens that a widower marries his deceased wife's sister out of a pious and affectionate feeling for his departed wife. And the feelings of the women of Germany are so strong in favour of such marriages, that it often occurs that the last parting request by a wife on her death-bed to her husband is, to marry her sister in case he should feel inclined to marry again. This arises partly from affection for her surviving husband or relations, that he may not become estranged from her connexions, and partly from affection to her sister, and very frequently, where there are young children, for their sake." . . . "Are you aware of any evil consequences from the celebration of marriages of this description?"—"None whatever. I have spoken with several of my friends, and I have written to some others, asking them whether they are aware that this power of dispensation is the cause of any immorality in families, and their answer is,—None whatever. I am not at all aware of any."—*Evidence of A. Bach, Esq.*

"Though a man might not marry two sisters together, it seems a natural conclusion, from the phrase, 'in her life-time,' that he might marry the sister of his deceased wife; and thus, we learn from Selden, the Jews in general understood it."—*Dr. Dodd.*

"The very strongest reason for engaging in a second marriage contract is, frequently to provide a suitable female head for a family of small children. In such cases, who is so likely to exercise the requisite maternal care and affection as the sister of a deceased mother? To prohibit a marriage under such circumstances seems to me inhuman."—*Hon. Judge Mason.*

"If the founders of our Church have incautiously adopted a canon prohibiting that which of its own mere authority it had no right to prohibit, and which Scripture does not warrant it in prohibiting, now that the evil has become apparent, it is surely time for that Church to rescind such canon, and to cease opposition to the repeal of any secular law founded upon it."—*Speech of Viscount Gage.*

"Having to deal with persons of other communions, who did not recognise the same ecclesiastical law—with the Roman Catholics, who by dispensation tolerate

such marriages—there being also Protestant Churches in Europe, and Protestant denominations in this country, who recognised the validity, ecclesiastically speaking, of such marriages. . . . It was impossible not to feel that the civil law which declared the illegality of such marriages, and bastardized the children, imposed a heavy penalty on persons who, by contracting these marriages, did not contravene the tenets of their religious persuasion." . . . "Socially speaking, if a case was made out that morality would be endangered by the Bill, that would be a reason for rejecting it; but he had not heard it established that such danger could arise. Marriage being a civil rite, they were bound to make that civil rite co-extensive with the feelings of the country. He had, therefore, come to the conclusion that it was his duty to support the second reading of the Bill."—*Speech of Right Hon. Sidney Herbert, M.P.*

"Doubtless it was very gratifying to our national pride to be told that a higher standard of morals prevailed in this country than could be found elsewhere; but surely it could not be denied that the rules of chastity were as strictly observed in the North of Germany, Switzerland, and the United States of America, as they were in England. He was entitled to say that the evils anticipated from permitting these marriages here, had not manifested themselves in those countries; for if they had, the law which authorised them would not have been suffered to continue for twelve months."—*Speech of the Attorney-General.*

"He had before stated his belief, that if the matter came to be investigated before the courts, it would turn out that the marriage contemplated in this Bill was in Scotland a lawful marriage; and he had good reason for saying that that was the opinion of an hon. baronet, than whom no person ever stood higher in the Church of Scotland—Sir H. Moncrieff. For himself, having come to the deliberate opinion that the marriage in question was not forbidden by the law of Leviticus, he came also to the opinion that the connexion was not a crime, and that the marriage was effectual for civil purposes."—*Speech of the Lord Advocate of Scotland.*

"I have known probably several scores of such marriages. I have counted a dozen within the last three or four minutes. Most of these dozen belong to the highest class of society. One of them is a doctor of divinity. Several of them are ministers of the Gospel. One is a member of Congress. Ambrose Spencer, the eminent chief-justice of this state, died a few years ago. He

married two sisters of Dewitt Clinton, the distinguished governor of this state. The Presbyterian Church of this village has probably not more than fifty members. Two of these married sisters of their wives."—*Gerrit Smith, Esq.*

"I express my conviction that Scripture says not one word against marriage with a deceased wife's sister. Surely it is not a crime; and, if it be not, the law that constitutes it so, must be, for the worst of all crimes is an evil and unjust law."—*Rev. Geo. Gilfillan, Dundee.*

"The prohibition of such marriages is, in my judgment, sanctioned neither by Scripture, nor by physiology, nor by expediency."—*Rev. H. Renton, Kelso, Scotland.*

"He declared, most conscientiously, he could find no prohibition of this marriage in the Holy Scriptures."—*Speech of Right. Hon. Stuart Wortley, M.P., Recorder of London.*

"He did not regard the measure as infringing on any direct scriptural command or precept.—He could not bring himself to understand even the passages from the Old Testament which had come under discussion that night as prohibiting the marriage of a man with his deceased wife's sister."—*Bishop of Norwich's Speech.*

"If this marriage be lawful in the sight of God, then I go upon the broad ground that, in such a case, no man has a right to impose a restriction on his fellow-man which God has not imposed; that the doing so can only bring a snare upon the conscience, and be the occasion of sin;—and that no sanction of human law can be expected ultimately to succeed in enforcing what a man feels is no transgression of the law of God." . . . "That it is lawful, according to the word of God, I consider incontrovertibly proved by the passage in Leviticus, of which I feel sure I have established the only correct translation."—*Rev. C. J. Goodhart.*

"After all the consideration he had been able to give the question, his conclusion was, that in no sense could the marriages proposed to be sanctioned by this Bill be said to be opposed to Scripture."—*Speech of T. E. Headlam, Esq., M.P.*

"The petition from the city of London, in favor of this marriage, was signed by a large number of persons, and among others, by the Lord Mayor, the Governor and Deputy Governor of the Bank of England, and a considerable number of the Directors of that establishment, by

59 private bankers, by the Chamberlain of the City of London, by 237 merchants, 146 solicitors, 124 barristers, and 61 physicians. It was his good fortune to be acquainted with a large number of the persons who signed this petition; and he could say from his knowledge of their characters, that their opinions were entitled to the greatest weight and attention."—*Speech of Lord Overstone.*

"That the enactments of the Levitical law are entirely misinterpreted, when applied in condemnation of marriage with a deceased wife's sister, was the decided judgment of Mr. Wesley, the founder of our Societies; and I believe that similar views have since been entertained by many of those among us who have been led by circumstances carefully to examine the matter, and whose competency to judge of such a question has given great weight to their conclusion."—*Rev. Dr. Bunting.*

"He had given his best attention to the arguments adduced, to show that there was a divine prohibition against these marriages; but he was satisfied in his own mind that no such prohibition existed." . . . "Then came the question as to the effects of this measure upon society, and he thought that the great preponderance of arguments, and facts upon which arguments were grounded, were in favour of the alteration of this law."—*Speech of Sir George Grey.*

"He was sincerely favourable to the object of the Marriages Bill."—*Speech of the Earl of Ellenborough.*

"I shall endeavour to show that the marriages it is sought to legalise are not forbidden by the Word of God; that they are not contrary to the law of nature, and that they are not inconsistent with the interests of society."—*Speech of Earl St. Germans.*

"I am happy to be able to inform the House, that Lord Denman is desirous of supporting this Bill."—*Ibid.*

"To the Right Honourable the Lords Spiritual and Temporal of the United Kingdom of Great Britain and Ireland, in Parliament assembled,

"The humble Petition of the undersigned Clergymen of the Church of England,

"Sheweth,—That, in the opinion of your petitioners, the existing law which prohibits marriages between a widower and his deceased wife's sister, is an inexpedient law, and ought to be repealed," etc., etc., etc.

Petition signed by nearly 1,300 Clergymen.

Marriage with a Deceased Wife's Sister.

CORRESPONDENCE

ON

THE TRUE INTERPRETATION OF

LEVITICUS, XVIII. 18.

וְאִשָּׁה אֶל-אֵחָתָהּ לֹא תִקַּח לְצִרָר לְגִלוֹת עֲרֹתֶיהָ עִלְיָהּ בְּחַיֶּיהָ

BETWEEN

JOSEPH STANSBURY, Esq. M.A.

HONORARY SECRETARY OF THE MARRIAGE LAW REFORM ASSOCIATION,

AND THE

REV. ALEXANDER M'CAUL, D.D.

PREBENDARY OF ST PAUL'S, PROFESSOR OF DIVINITY, KING'S COLLEGE, AND RECTOR OF ST. MAGNUS THE MARTYR.

SECOND THOUSAND.

LONDON:

JOHN HATCHARD & SON, 187, PICCADILLY.

1853.

Extract from a Letter to the REV. ALEX. M'CAUL, D.D.

December 31st, 1850.

REVEREND AND DEAR SIR,

In common with many who are interested in forming a sound opinion on the lawfulness of Marriage with a Deceased Wife's Sister, I request that you will do me the favour to express your judgment on the following points:—

- 1.—Do the words in Leviticus xviii. 18, "*a Wife to her Sister,*" express the true sense of the Hebrew Text?
- 2.—Is there any ambiguity, any room for reasonable doubt, whether the word, "*Sister,*" is taken figuratively, and whether the meaning may be, "*one Wife to another?*"
- 3.—How did the ancient Jews interpret the passage, and what was their practice?
- 4.—What is the sense adopted by modern Jews, and what is their practice?

We ask the benefit of your acquaintance with the Hebrew language and literature, to enable us to decide whether, as a matter of fact, this Marriage is forbidden, or impliedly allowed, in the Mosaic law.

I have the honour to be,

REV. AND DEAR SIR,

Your obedient Servant,

JOSEPH STANSBURY.

REV. ALEX. M'CAUL, D.D.,
Rectory, King William St.

[ANSWER.]

RECTORY, KING WILLIAM STREET, LONDON BRIDGE,
December 31st, 1850.

DEAR SIR,

In answer to your queries, I have to reply:—

- 1st.—That the words of the Authorised Version, "*A Wife to her Sister,*" Levit. xviii. 18, do express, in my opinion, the true sense of the Hebrew words; literally, "*a Woman to her Sister.*"
- 2nd.—I think there is no room for reasonable doubt *here*. In other places the words signify "*one to another,*" (not "*one wife to another*") where two things before spoken of are specified. Here no such subjects precede, to which the version "*one to another*" can apply; on the contrary, verse 18 is an inde-

pendent command, and the order of the Hebrew words is important, "*A Wife (or a woman) to her sister thou shalt not take.*"

3rd & 4th.—So far as I know, the Jews, ancient and modern, have had but one interpretation, exhibited in their practice of Marrying a Deceased Wife's Sister.

I remain, DEAR SIR,

Yours faithfully,

ALEX. M'CAUL.

TO JOSEPH STANSBURY, ESQ., M.A.

A second letter having been addressed to the Rev. Dr. M'Cauley, the following reply was received—

RECTORY, 39, KING WILLIAM STREET,
February 26th, 1851.

DEAR SIR,

In my reply to your former communication, I expressed my conviction that the Authorised Version of Levit. xviii. 18 contains the true sense of the Hebrew words. You now send me a newspaper paragraph which says—

"It should be translated '*one wife to another*' Exactly the same words here, by mistake, interpreted '*wife to a sister,*' occur in four (and I believe only four) other parts of the Old Testament, and are in every case rendered '*one to another.*'"

Very true. "*One to another,*" but not "*One Wife to another.*" Then these four passages, instead of confirming the marginal translation, bear a fourfold testimony against it. They testify as to the usage of the Hebrew language, that when two or more things or persons are spoken of, and it is necessary to express "*one to another,*" the Hebrews say (if the things or persons be masculine) "*A man to his brother*" [*e.g.* Gen. xxxvii. 19, Exod. xvi. 15, Levit. xxv. 14, Isai. ix. 19, Jer. xxiii. 35, out of many]: if feminine, they say, "*A woman to her sister*" (Exod. xxvi. 3, 5, 6, 17). But in all these cases, the things or persons spoken of precede. In Levit. xviii. 18, there are no persons spoken of before, no subjects to which "*one another*" can refer. The four passages in Exod. xxvi. are therefore not parallel. Besides, it seems rather strange reasoning to infer, because certain Hebrew words, occurring five times in four verses of Exod. xxvi. are not translated "*one wife to another,*" that, therefore, they ought to be so translated in Levit. xviii. 18. The reference to Exod. xxvi. only shows that there is no passage in the Bible in which the Hebrew words referred to

signify "one wife to another," as the gentleman who writes in the newspaper would have it.

II. To express the idea "one wife to another," as a prohibition against polygamy, the Hebrews would use expressions very different.

1. They might say, "Thou shalt not take a wife to a wife," or "a sister to a sister," repeating the word as Isai. v. 8, "Woe unto them that join house to house, that lay field to field;" or
2. They might use a different preposition by "in addition to." You have examples Gen. xxviii. 9, "And he [Esau] in addition to the wives that he had, took Mahalath," etc., and Gen. xxxi. 50, "If thou shalt afflict my daughters, or if thou shalt take wives in addition to my daughters," etc. This usage may be supported by other passages not relating to marriage, as Numb. xxxv. 6, xxix. 6, etc. The prohibition would then sound thus:—"Thou shalt not take a wife in addition to thy wife;" or
3. They might use the word אחרת "Another," as Exod. xxi. 10, "If he take him *another* wife," and 1 Chron. ii. 26, "Jerahmeel had also *another* wife." This form may also be confirmed by other passages not relating to marriage, as Gen. xxx. 24, Levit. xiv. 42, etc.

III. The assertion that Levit. xviii. 18 "simply forbids polygamy" is proved to be unfounded by other plain passages of Scripture. Though the Law of Moses plainly sets forth that polygamy is opposed to the original institution of marriage, it as plainly recognises, and permits the marriage of more wives than one; and regulates the duties of the husband in such cases (Exod. xxi. 7—11; Deut. xxi. 15—17. David's adultery is denounced by the Prophet, but not his polygamy (2 Sam. xii. 8). I am of opinion, therefore, that the Authorised Version of Levit. xviii. 18, agrees best with the usage of the Hebrew language, and the fact of the Mosaic permission of polygamy; in fact, that it gives the true meaning of the Hebrew words.

I remain, DEAR SIR,

Yours faithfully,

ALEX. M'CAUL.

To JOSEPH STANSBURY, Esq., M.A.

THE
LAWFULNESS
OF
MARRIAGE
WITH A
DECEASED WIFE'S SISTER.
EXAMINED BY SCRIPTURE.

In a Letter to a Friend.

BY
THE REV. C. J. GOODHART, M.A.

MINISTER OF PARK CHAPEL, CHELSEA.

PUBLISHED WITH THE AUTHOR'S PERMISSION.

Third Edition.

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BRADBURY AND EVANS, PRINTERS WHITEFRIARS.

READING, July 1848.

MY DEAR FRIEND,

I SEND you the result of my inquiry into the lawfulness of a man's marriage with his deceased wife's sister, premising that I entered upon it with a feeling that such connexions are, *as a general rule*, undesirable; but that, after all, the mind of God upon such a subject is to be followed, if it can be fairly ascertained. The passage of Scripture bearing on the subject is as follows:—

“Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness. Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside the other in her life-time.”—
LEV. xviii. 16, 18.

First, then, as to the translation. “A wife to her sister” is a Hebrew phrase, often used instead of the words “one to another.” Thus, in Exodus xxvi. 3, 5, 6, 17, where the *curtains*, *loops*, and *tenons* are spoken of, the expressions “one to another,” “one of another,” “together,” “one against another,” are literally “a woman (or wife) to her sister.”

So in Ezekiel i. 9, 23, iii. 13, in reference to the *wings* of the living creatures, the expressions “one to another,” “one toward another,” “one another,” are literally as before—“a woman (or wife) to her sister.”

Hence it has been argued, that in Leviticus xviii. 18, these words ought to be translated, “Thou shalt not take *one wife to another*,” and that the object of the prohibition is to forbid *polygamy*. The answer to this is distinct and conclusive. The literal rendering of the Hebrew words in the 18th verse is, “and a woman (or wife) unto her sister thou shalt not take.” Now, if it ought to have been translated as in Exodus and Ezekiel, it would have required a different form of expression, namely, “Thou shalt not take *wives*, a woman to her sister,” or “one to another;” just as, in the passages referred to, we always find some noun,

“curtains,” &c., and then the words “a woman to her sister” follow. We are compelled, therefore, by the language of the passage, to understand it as translated in our version; and not to construe it as a prohibition of polygamy. It might be added, that facts are also against such a construction, as it is notorious that polygamy was not deemed to be prohibited amongst the Jews: and Bishop Patrick and others, who are opposed to the lawfulness of the point in question, still admit that the whole context requires that the words be taken in their *literal* and not in their *figurative* sense; and that the translation of the former clause in our version is certainly correct. This point then, may be considered as disposed of.

But we come, next, to the words “in her lifetime,” which it has been attempted to turn in various ways: such as, “Thou shalt not take a wife to her sister to vex her all her life long;” or “to be a burden upon her in her life,” &c. &c. Now I do not hesitate to say that no sound Hebrew scholar would ever have thought of such a version, unless it were to answer a purpose. The words are fairly and properly translated in our Bible, and there is not the slightest reasonable ground for such alterations—which, to say the least, are most unnatural, if the Hebrew will indeed bear them at all; and every one knows the tricks which may be played with a particle or preposition. But when the alteration is made, nothing is gained; for, after all, the prohibition turns on the *vexation*, which could only be in the life-time, and therefore dies on its own ground when the wife dies, who alone could be its object. And so thoroughly, if I mistake not, does the Jewish commentator Abarbanel see this, that he even maintains that the sister may be married *in the life-time* of the other, if vexation would not ensue.

I deem it, therefore, settled beyond any reasonable doubt, that our version is perfectly correct: and what, then, is the amount of the prohibition in this passage in its natural and unforced interpretation? Simply this: Polygamy was allowed among the Jews; and it was not unnatural, as a consequence, to marry two sisters at the same time. But this, as in the case of Jacob, led to great vexation and jealousy; and therefore is forbidden under the circumstances in which alone these results could occur, namely, the life-time of the first wife. But for these circumstances it would not have been forbidden at all; or if a *total* prohibition had been intended, the circumstances would not in any reason

have been alluded to. After, therefore, the death of the wife, it follows as a matter of course that the husband might marry her sister. Such I believe must be the *unprejudiced* impression from the passage: and I now proceed to consider whether this view is strengthened or overthrown by other considerations.

Secondly, then, I would state the views of the Jews themselves on the question; and these may be briefly summed up under the four following heads:—

(1.) They do not understand the verse to forbid polygamy.

(2.) They do not understand it to forbid marriage with a deceased wife's sister after the wife's death; but, on the contrary, that it expressly allows it.

(3.) They do understand it to forbid the marriage of a wife's sister while the wife is living.

(4.) They understand it also to forbid the marriage of a wife's sister *after the wife has been divorced*, while she is still living—a case not at all unlikely to occur among those with whom divorce was so common.

Surely, then, there can be no doubt as to the right understanding of the passage, with the light thus thrown upon it.

But, thirdly, the 16th verse, which forbids a woman to marry two brothers, except in the special case in which it is afterwards commanded, is urged against the natural meaning of these words.

Now, if the 16th verse had stood alone without the 18th, there would have been strong ground to assume the converse; though even then, perhaps, this would have been assuming too much: for it is quite possible to suppose (and probably this is not far from the truth) that the union of one woman successively to two brothers might involve some mixture of kin, which would not be the case in the union of one man successively to two sisters; and some singular analogies, which cannot be detailed here, would seem to render this probable. But however this may be, if the 16th verse had stood alone without the converse being mentioned, the safer ground might have been to have assumed the latter. But seeing the converse is *actually mentioned*, nothing would have been easier than to state it summarily, “Thou shalt not marry thy wife's sister:” and yet, instead of this being the case, it is only forbidden in a particular instance, or under peculiar circumstances. Surely, if total prohibition had been the object, nothing could possibly have tended more

completely to defeat it than stating it as it is stated in the text. The converse being mentioned at all, would imply that the 16th verse could not *necessarily* involve it: and its being mentioned as specially to be observed in one particular case, brings it, if words mean anything, under the well-known condition, that "the exception proves the rule."

Fourthly. The prohibition with regard to the *daughter* and *grand-daughter* of a wife (v. 17), because they are near of kin, is urged in favour of the prohibition which we are considering. It may be deemed almost superfluous to notice this after what has been said; but the object of this letter is fairly to canvass the case and its difficulties, without evasion, and, if possible, to clear up those difficulties. I admit, then, at once that there is no kin at all, properly speaking, in these instances, in which, notwithstanding, marriage is distinctly forbidden, any more than in the case before us: but still there is a very marked difference. For—not to mention that the parties are in different generations, and not in the same generation—when a man marries a woman having a daughter he instantly becomes to the latter, in the sight of God and man, "in loco *parentis*:" and the case would scarcely be considered different in reference to a grand-daughter. But in no case does a wife's sister necessarily come under the care of her brother-in-law, nor does the connexion involve, as in the other case, the positive duty of his protection. Seeing, then, that a distinction is clearly made in the Word of God in the two cases, this seems quite sufficient to account for it.

Fifthly. It has been urged by some that the *Levitical* law is not binding upon *us*; and that, therefore, after all, we must decide the question only by such light as we can get upon it in connexion with the *present* dispensation. Now let the former part of this statement be admitted, yet it may still be fairly remarked, that the *Levitical* law *has* much to do with the case. For (1) there is nothing in these enactments peculiar to the *Jews as Jews*: what was right for them in these matters must be right also for us; and therefore, (2) though their law be not *binding* upon us in such things, still it enables us to ascertain the mind of God upon points equally concerning us all: and it can scarcely, therefore, be supposed that such enactments would not have, or ought not to have, the greatest weight in guiding the decisions of a Christian mind.

Sixthly. The judgment of the Councils and of the

Reformers on this point ought certainly not to be passed over: and I am not one disposed to underrate the value of such a judgment in such a case: still, it is to be considered that many things were enacted by those very same Councils, which Scripture either condemns, or does not warrant: and that the Reformers themselves, in matters of *comparative* indifference, sometimes acted upon their impressions, without fully going into the merits of each particular point. We have reason, too, to believe that their interpretation of the *Levitical* law formed the basis generally of their decisions on these matters; and I am quite disposed to think that in this respect we have those in our own day quite as capable of forming a correct judgment as they were. At the same time, I admit that those who plead the judgment of the Church *on such a point as this*, through so many ages, have a strong *primâ facie* ground to stand upon: and I believe that this circumstance, conspiring with private aversion to the marriage of persons too nearly connected, has led almost all the opponents of the contemplated alteration to an unfavourable decision. It has caused them, in short, to set aside altogether the absolutely necessary interpretation of the *Levitical* law, and to affix to it a sense favourable to their own views, without attempting to ascertain what is its real meaning, or grappling with the passage in its honest and natural sense. The sixteenth verse is therefore treated and argued upon, and pressed, just as if the eighteenth did not exist.

It only remains that I briefly state the conclusions to which I have been compelled to come after a careful review of the whole matter.

On the one hand, I can understand the feeling of many both of the present and past generation who disapprove of such a connexion, and to whose judgment I am willing and anxious generally to defer. On the other hand, expediency suggests many reasons for allowing it, though it has also something to urge, less strong, I think, against it.

But, to my own mind, the question turns on *none* of these points; but on one which takes precedence of them all,—namely, *its lawfulness in the sight of God*.

If it be *unlawful* in the sight of God, the question is decided at once. If it be *lawful*, then I go upon the broad ground that, *in such a case*, no man has a right to impose a restriction on his fellow-man, which God has not imposed;—that the doing so can only bring a snare upon the conscience,

and be the occasion of sin;—and that no sanction of human law can be expected ultimately to succeed in enforcing what a man feels is no transgression of the law of God.

In this case, for instance, the supposed *evil* of the marriage may possibly be prevented; but the greater *sin* of concubinage will most certainly be encouraged.*

If, therefore, it is *unlawful*, it is inexpedient of course. If it is *lawful*, no imagined inexpediency can justify restriction.

Further: that *it is lawful*, according to the mind of God, I consider incontrovertibly proved by the passage of Leviticus, of which I feel sure I have established the only correct translation. The view the Jews take (and their authority in such a case cannot be trifling) fully bears out all this; and the sixteenth and seventeenth verses do not militate against it: and under such circumstances, and in the face of such evidence, I do not deem the Councils, Canons, &c., sufficient to establish the opposite view.

I have only to add, that, as I believe I have treated this subject with sincere impartiality, I trust that any who conscientiously think these views ought to be opposed, will not be content with mere assertion, or declamation, which proves nothing. Let them grapple fairly with the statement here made; and, if it be false and groundless, expose it unsparingly. I am quite ready in that case to yield at once; but to make up one's mind first on a question, and then to *seek*—that is to *invent*—arguments to sustain one's opinion, is the part not of him who desires to know truth, but of him who is taking the readiest way never to find it.

Leaving the above to your candid judgment,

I remain, my dear Friend,

Yours very faithfully,

C. J. GOODHART.

* This natural inference from the simple view of the case has been since fully borne out by the evidence developed in the Report of the Commissioners on the State and Operation of the Law of Marriage, recently laid before Parliament.

Marriage-Law Dialogues.

A DAY TOO LATE;

OR,

A GLANCE AT THE WORKING

OF

THE MARRIAGE LAW

OF

1835.

“What! Blow hot and cold with the same breath?”—*Old Fable.*

PRICE TWOPENCE,
Or 10s. per Hundred for distribution.

LONDON:
EFFINGHAM WILSON, PUBLISHER, 11, ROYAL EXCHANGE.

1852.

THE MARRIAGE-LAW
A DAY TOO LATE
A GLANCE AT THE WORKING
1832
PUBLISHED BY W. H. WILKINSON, 11, ROYAL EXCHANGE

MARRIAGE-LAW DIALOGUES.

SCENE—*The Vestry of a Church.*

TIME—*The Friday Evening before Communion Sunday.*

The clergyman is discovered in his robes, waiting to receive those who are desirous of coming to the Communion Table on the following Sunday. The pew-opener introduces a gentleman and lady. After they are seated, and the usual compliments have been exchanged, the gentleman commences:—

Gentleman. The object of my calling on you, Sir, to-day, is to apprise you of my wish to approach the Lord's Table with my wife next Sunday.

Minister. I am always happy to meet those who are devoutly disposed, and to encourage their approach to the Sacred Table. But there is one circumstance which you will excuse me for adverting to. It has been reported to me that you have married the sister of your deceased wife. Allow me to ask whether that is the case?

Gentleman. It is really so.

Minister. Then, I regret to say that my duty will not allow me to welcome you to the table.

Gentleman. Indeed, Sir!

Minister. No, Sir. I regret it very much. But I have a duty to perform. A marriage of this description is declared by our Church, and by the law of the land, to be incestuous and unholy, and those who have contracted it are not really married, but must be regarded as "notorious evil-livers," and, as such, excluded from the Holy Communion.

Gentleman. Then you really think that this marriage is contrary to Scripture and good morals?

Minister. I have always been taught so.

Gentleman. Can you show me any passage in Scripture where it has been forbidden?

Minister. Not in express words.

Gentleman. What do you think of the 18th verse of the 18th chapter of Leviticus? The words are, "A woman to her sister thou shalt not take, beside the other, *in her lifetime.*" What do you think of the limitation of the prohibition to the lifetime of the wife? Does it not appear to you plainly to permit the marriage after her lifetime!

Minister. I must confess that I should naturally so interpret it, if I did not know that our Church took a different view of the matter. I must, therefore, suppose that there is some hidden mysterious meaning which I cannot fathom, and must believe as the Church believes.

Gentleman. Then you really must reject us?

Minister. What alternative have I?

Gentleman. Will you have the kindness to look at that document?

Hands him a copy of the Act 5 & 6 Will. 4, c. 54, commonly known as Lord Lyndhurst's Act. The clergyman reads the Act carefully, and especially dwells upon the following passage:

"Be it therefore enacted, That all marriages which shall have been CELEBRATED BEFORE THE PASSING OF THIS ACT (31st of August, 1835), between persons being within the prohibited degree of affinity, shall not hereafter be annulled for that cause by any sentence of the Ecclesiastical Court, unless pronounced in a suit which shall be depending at the time of the passing of this Act.

"And be it further enacted, That all marriages which shall hereafter be celebrated between persons within the prohibited degree of consanguinity or affinity, shall be absolutely null and void to all intents and purposes whatsoever."

Minister. This, Sir, appears to alter the case materially. I now see the thing in another light. Pray when were you married?

Gentleman. On the 31st of August, 1835.

Minister. Then I am happy to find that I am authorised to admit you to the privileges of the Church. Although persons so married are said to be joined "otherwise than God's

law doth allow," yet, for wise and good reasons, no doubt, our legislature has seen fit to draw a marked line of distinction. All who contracted this alliance on or before the 31st of August, 1835, are declared to be indissolubly united. They are man and wife, and their children are legitimate. I am permitted, nay, I am legally bound, to admit them to the Sacrament. I am very sorry to have given pain to you and your good lady, and, as in duty bound by Act of Parliament, I shall have much pleasure in welcoming you on Sunday morning next.

Another Lady and Gentleman, who have been waiting outside, are then introduced. The gentleman begins.

Gentleman. I am desirous, Sir, with Mrs. —, of partaking of the Communion on Sunday next.

Minister. Have you not, Sir, married the sister of your former wife?

Gentleman. Yes, Sir, such is the fact. We had several young children, and, on her dying bed, she took my hand, and that of her sister, and putting them together, entreated that, if we could feel an affection for one another, we would marry. We were well acquainted with each other's character and disposition, and, urged by the wish of one we both loved, we were united. We have been happy: our dear children know not the loss of a mother, and all our friends say we have acted wisely.

Minister. And when were you married?

Gentleman. On the 1st of September, 1835.

Minister. And where?

Gentleman. In London.

Minister. Then it is my painful duty to inform you that I cannot admit you to the Lord's Table.

Gentleman. Cannot admit us? Why, my friend C— and his lady, who attend the Rev. Mr. D—'s Church, are admitted regularly.

Minister. Yes, but they were married on the 31st of August, and you were not married till the 1st of September. That makes all the difference. The lady and gentleman whom you just now saw go away, were married on the 31st

of August, and I shall have the pleasure of receiving them with the rest of my flock on Sunday next. But if you approach, I shall be obliged to reject you.

Gentleman. Reject me! On what grounds?

Minister. As a "notorious evil-liver." You and your female companion there are not married.

Lady. Cruel prohibition! Unnatural law! Was my beloved sister wrong in following the dictates of natural affection; or is the law a relic of monkish rigour and superstition?

Gentleman. But are not all such marriages alike in the sight of God?

Minister. Undoubtedly they are.

Gentleman. Who, then, has drawn the line? Who has ventured to pronounce the one indissoluble and the other void? By what authority is my neighbour pardoned while I am punished?

Minister. The Legislature has fixed the limit.

Gentleman. And did the Bishops consent?

Minister. Yes, I believe they did: but the Bishop of Exeter says, that he did not so vote, until he had ascertained that the parties might still be proceeded against for incest, notwithstanding their marriages were legalised.

Gentleman. And was he candid enough to tell the world so at the time, or did he not let it appear till some fifteen years afterwards?

Minister. With this I have nothing to do. I have only to administer the law as I find it. Had you been married a day sooner, I should then have hailed you as a brother; now I must regard you as "a heathen man and a publican."

Gentleman (to the Lady). My dear, oblige me by withdrawing for a few minutes.

[The lady retires.]

Gentleman. And what, Sir, do you advise me to do with the lady to whom I have been thus united?

Minister. Really, Sir, I cannot advise you. The Church would probably say that you should be separated.

Gentleman. I do not know what the Church may say; but this I know, that if to live with my beloved companion be wicked, to forsake her and my children would be monstrous! I wish you, Sir, a very good evening.

A third lady and gentleman are then introduced. When the clergyman has ascertained that they, too, are similarly related, he inquires—

Minister. But when were you married?

Gentleman. We have just returned from our wedding trip.

Minister. And where were you married?

Gentleman. In Germany.

Minister. I fear I cannot admit you to the Communion.

Gentleman. Pray, Sir, have the kindness to read this document.

He hands him Lord Lyndhurst's Act. After perusing it, the clergyman says—

Minister. With what design do you hand me this document?

Gentleman. You will find, Sir, that it is a local or territorial Act, and does not extend even to Scotland, much less to foreign countries.

The minister again examines the Act, and reads aloud the following passage:

"Provided always, and be it further enacted, That nothing in this Act shall be construed to extend to that part of the United Kingdom called Scotland."

Minister. That is a point I have never considered. Favour me with a call to-morrow afternoon, and I will in the interval consult my Diocesan.

The gentleman calls at the parsonage at the time appointed. He is introduced into the study; where he finds the clergyman perusing a letter with the episcopal arms upon the seal. After politely asking the gentleman to be seated, he proceeds—

Minister. I am happy to tell you that I am authorised by my ecclesiastical superior to welcome you to the holy rites of the Church. This marriage of your's is in itself no better than others of the same description; but as it was not celebrated in England, this Act does not apply to it, at least, I have no authority for saying it does. You may, therefore, with your lady, come to the table to-morrow morning.

Gentleman. I am very happy to find that such is the case: but I can never rest satisfied while the law condemns other unions as innocent as my own. I have taken the liberty of bringing with me a few publications bearing on this subject, and, if you will allow me, I will leave them with you for your perusal.

Minister. It is a very important question, and one which I shall feel bound to investigate for myself.

After he is gone, the clergyman opens the parcel, and examines the various pamphlets. After some time spent in this way, his reflections take the following form:—

Minister. Well, after all that has been said, I cannot see the reason for prohibiting this marriage. All the arguments for the prohibition are subtle, far-fetched, and inconclusive. There is nothing but inference, and that inference by no means clear and undeniable. I do not think this can justify the placing a yoke around the neck of our fellow-Christians. Let every man be fully persuaded in his own mind. If any one judges it wrong, let him abstain. It is true there are wise and good men in favour of the restriction; but are there not as many men, equally wise and good, on the other side? It is said the old canons condemn it; but they condemn many things which every intelligent Christian man now knows to be perfectly unexceptionable. If we are tied down to the canons, we must take them entire. But our Church tells us in her Articles that councils have erred, and may again err, and that our only safe rule is, "To the law and to the testimony." If the word of God does not forbid this marriage, man has no right to do so. But even if the marriage were wrong, the present law is most inconsistent. It forbids, but does not prevent. It ought to do one thing or the other; and as neither scripture nor common sense will justify the penal prohibition of this marriage, the only wise and consistent course is to leave it free. Happily the same authority that has introduced all this confusion can remedy it, and I will sign the first properly-worded petition that may be presented to me.

The clergyman then lays aside the pamphlets, and returns to the preparation of his sermon for the next day, the text of which happens to be Romans xiv. 4:—

"WHO ART THOU THAT JUDGEST ANOTHER MAN'S SERVANT? TO HIS OWN MASTER HE STANDETH OR FALLETH. YEA, HE SHALL BE HOLDEN UP: FOR GOD IS ABLE TO MAKE HIM STAND."

[SEVENTH THOUSAND, WITH COPIOUS NOTES, CONTAINING THE OPINIONS OF EMINENT DIVINES, AS TO THESE MARRIAGES BEING IN ACCORDANCE WITH THE WORD OF GOD, AND OF EMINENT LAWYERS, THAT THEY ARE AGREEABLE TO THE LAW OF SCOTLAND.]

REASONS

ASSIGNED BY

AN ELDER OF THE FREE CHURCH

FOR

DECLINING TO SIGN A PETITION TO PARLIAMENT
AGAINST A BILL FOR LEGALISING

MARRIAGE WITH THE SISTER OF A DECEASED WIFE.

"Neither shalt thou take a wife to her sister, to vex her *beside the other* IN HER LIFETIME."—LEVITICUS xviii. 18.

"In verse 18th, the prohibition is only against marrying a wife's sister during the life of the wife, which of itself implies a liberty to marry the sister after her death—besides implying a connivance at polygamy."

THOMAS CHALMERS, D.D., LL.D.

"If I have erred (in believing this marriage a Scriptural one) it is in good company."—JOHN EADIE, D.D., LL.D.

DAVID ROBERTSON, BOOKSELLER TO THE QUEEN, GLASGOW.

EDINBURGH: WILLIAM OLIPHANT & SONS.

LONDON: HAMILTON, ADAMS & Co.

1853.

LONDON :
BRADBURY AND EVANS, PRINTERS, WHITEFRIARS.

REASONS, &c.

IN May, 1849, the General Assembly of the Free Church appointed a Committee to oppose the Bill brought into the House of Commons by Mr. Wortley, for legalising the marriage of a widower with a sister of his deceased wife, which, with other marriages of affinity, had been declared void by Lord Lyndhurst's Act, in the year 1835. This committee accordingly instructed the Ministers throughout the Church to get up petitions against that Bill, signed by the ministers, elders, deacons, and members of the respective congregations. A messenger from the minister of the congregation with which the writer was connected, having called on him for his signature (as an Elder) to such a petition, he declined signing it, and desired the messenger to say to the Minister, that he would call on him in the course of the day.

The Elder called on his much-esteemed pastor, and told him that he could not conscientiously sign the petition: that it stated that such marriages were prohibited in the Word of God; and that for about a quarter of a century he had been fully persuaded that—far from being contrary to that Word—they were positively sanctioned by it. That a good many years ago, in consequence of the General Assembly of the Church of Scotland having ordered a man and woman belonging to the parish of St. Ninians (if he recollected aright) to be excommunicated for having contracted such a marriage, he had been led to review his opinions on the subject. That the late agitation as to Mr. Wortley's Bill

had led him to do so again, and that every new examination confirmed the views he had held for so many years.

While the Minister and Elder were engaged in this conversation, another excellent Minister of the Free Church entered. The first Minister stated to him what was the subject of conversation, and expressed the pleasure that he had at his coming so opportunely, as he might be able to remove the Elder's scruples.

The second Minister said that certainly such marriages were contrary to the Word of God, for parties related by affinity were equally prohibited as those by consanguinity.*

The Elder replied that the Confession of Faith said so,† but the passage of Scripture quoted by the framers of it, in proof of the allegation, viz., that John Baptist had said to Herod that it was not lawful for him to have his brother's wife, was not to the point—Herodias was not his brother's widow, but his brother's wife. That Herod had seduced her, and was at that time living in adultery with her.‡

Both of the Ministers said that certainly nothing could be founded on that text. But neither brought forward any other.

In May, 1850, petitions to the same effect were again got up, and the Elder again declined to sign. He now felt that if this were to be repeated again, he would, to exonerate his conscience, as a Member of Session, be under the necessity of protesting against it. He also doubted if it were right for him to continue to take part in the government of a church which was so earnestly pressing on the Legislature of the country to give civil sanction to what he looked on as

* The doctrine that affinity and consanguinity are identical was never known till broached by some of the earlier popes. The words "near of kin" are by the common usage of mankind, as well as by the common and statute law of this kingdom, held to refer to consanguinity only. See Roper on the "Law of Property arising from the Relation of Husband and Wife," where it is shown to have been decided by the English judges, that if a man die, leaving property to his near of kin, his wife will not take it, and *vice versa*. And while a *sister* pays a legacy duty of 3 per cent., and a first cousin 5 per cent., a *wife's sister* pays 10 per cent.

† See note A.

‡ Herod's wife was living; Herodias's husband was living; and the latter was niece by consanguinity to both her husbands.—*Josephus, Antiquity of the Jews.*

a Popish dogma, opposed to the plainest statements of the Word of God.

About August, 1850, he addressed a letter to his Minister, assigning his reasons for believing that these marriages were not forbidden in the Word of God. And not only so, but while marriage between other parties was lawful—because not forbidden—the marriage with a deceased brother's widow, and with a deceased wife's sister, were the only ones which had been *formally* and *positively* sanctioned by Divine authority. God foreseeing the errors of Popery had thus beforehand made the subject so plain that the abettors of that system might be the more inexcusable.

The Elder at this time expressed his desire to demit his office.

The much-loved Pastor expressed great reluctance to accept of the proposed demission. He said that there was no occasion for it; that some latitude must be allowed for private judgment; that it was not to be supposed that every one could assent to everything contained in the Confession of Faith.*

The Elder replied that he could not look on the subject in that light; that the Church, by agitating so earnestly to get petitions to Parliament on the subject, evidently regarded it as very important; and that he could not conscientiously act as an Elder in a Church which deferred more on this point to the Canon Law of the Man of Sin than to the Word of God.

The Minister asked the Elder if he would have any objection to meet one or two of his clerical friends to have the matter talked over, as they might effect a change in his views.

The Elder replied that he would be very happy to do so, and, though he had held these views so long, he desired

* It would be well if these Christian principles had been acted upon by individual ministers and church courts, in Scotland, towards those who independently exercised the right of judging for themselves of the meaning of the Word of God. We should not then have heard an exemplary Elder of the Church told publicly that he had lost his "status" in the Church, because he ventured to express an opinion, conscientiously formed, that marriage with a deceased wife's sister is not contrary to the revealed will of God.

to come simply to the Word of God, and with his mind open to conviction.

Considerably more than a year passed over without the proposed conference taking place, and during that period the Elder repeatedly tendered his resignation. The Minister as often declined accepting of it, and spoke of the conference as still to take place first. At last in January, 1852, the Elder addressed a letter to the following effect to his Minister, which he now lays before the public, embodying in it a few passages from his first letter, to make the argument more complete :—

January, 1852.

MY DEAR SIR,—

I mentioned to you privately at last meeting of Session, that I intended resigning office at the next meeting, and that I hoped you would then accept of my demission without any further postponement.

About two years ago I made up my mind to this, and I have seen no reason to change it.

(Here was given a reason of a private nature for demitting office.)

I might have left your Session and Congregation without assigning any other reason than the above, but faithfulness to the Church, and faithfulness to the purity of God's Word, would not allow me to slip away in that manner. I therefore, in November, 1850, stated to you very fully my reasons for declining to continue to act as an office-bearer in a Church, which I believe adds to the Word of God, prohibits what He has not prohibited, and urges her members to petition the civil Government to prevent, if possible, even the members of other Christian Churches from doing what they, and those who are over them in the Lord, are thoroughly persuaded is sanctioned by His Word.

Some months ago you proposed that I should meet with you, and one of your brethren in the ministry, to read over the letter which I have just referred to. I agreed to your proposal, and I am still willing to have such a meeting if you think that it will be productive of any good. I would, however, wish that you would let me know the name of the

Minister whom you would wish me to meet, before you engage him to do so. There are some men that I would not encounter. There are loud talkers, who would bear me down by mere vociferation. If you can get an humble-minded man who loves the Bible, and who is willing to learn from it with the simplicity of a little child, I shall be happy to talk over the subject with him, after having implored the Father of Lights to divest our minds of all prejudice, and to lead us to take the lessons of His Word simply as He has given them.

In acting as I have done, and as I am still willing to do, I have had to summon up all the moral courage of which I am possessed. But being satisfied that I have the Word of God on my side, and this conviction being corroborated by finding that every man famous for his skill in Hebrew literature and Scriptural exegesis is with me, I do not feel ashamed of the cause.

If such an interview as you proposed should take place, I would suggest that my long letter, addressed to you fifteen months ago, should be first read; and then, that the heads of my argument, as I summed them up in an addition to that letter, should be gone over *seriatim*, and a decision come to, if possible, on each one, before proceeding to discuss the following.

I again repeat these heads of argument, with some observations on them, that it may be understood what I shall expect your friend will undertake to prove.

I. I lay it down as an axiom, *that every marriage not forbidden by God is a lawful marriage.** If this be not granted, I can proceed no further. I then assert that it is an undoubted truth, that the marriage of a widower with a sister of his deceased wife is not forbidden in the Word of God, and I call on my opponent to prove that it is forbidden. It is not my province to prove that it is positively sanctioned,

* A truth necessarily involved in the words of our Saviour, "What God hath joined together, let not MAN put asunder;" by which man is forbidden to separate those who have been joined "as God's word doth allow." The line drawn by Divine wisdom is not to be enlarged or contracted by human authority.

(though I think I can do so,) but my opponent must prove that it is forbidden. If he shall fail to do that, the question is settled. Such a marriage must be acknowledged to be lawful.

Up to this time, I have in vain asked for proof that such a marriage is forbidden. I have, indeed, been told, that a man is forbidden to marry the widow of his deceased brother, and that, therefore, we may infer, that he ought not to marry the sister of a deceased wife. But I deny that God ever forbade a man to marry a brother's widow. If, however, I should admit that God did forbid it, I would not allow the inference to be necessarily true. More especially, I would not allow it to be true, if I found that such an inference contradicted the plain meaning of another portion of the Word of God. I might say, with Dr. Chalmers, "it is remarkable that such is the case,"—that the one should be forbidden, and the other should be positively sanctioned.

I have been told that marrying a deceased brother's widow is forbidden in the words of John Baptist to Herod—"It is not lawful for thee to have thy brother's *wife*." It would have been something to the point if John had said, "it is not lawful for thee to marry the *widow* of thy deceased brother." But he said no such thing. He did not mean to say so. He just meant what he said, and nothing more.

Josephus, in his "Jewish Antiquities," (book xviii. chap v. sect. 1,) informs us, that Herod, having gone on a journey to Rome, stopped at his brother's house, seduced his wife, and was living in open adultery with Herodias when John reproved him.

If I had access to a man guilty of such flagrant wickedness, I would use the very words of John Baptist to him; but I would feel that I had just cause of complaint if, from my doing that, any man should so wrest my words as to publish to all around him that I believed it to be wrong for a man to marry his brother's *widow*. It cannot, therefore, be proved from this text that such a marriage is forbidden, and I hope the friend you may engage to meet me will not spend time in discussing it. Indeed, at the first conver-

sation I had with you on this subject, nearly three years ago, both you and the Rev. Mr. —, whom I met at your house, frankly admitted that nothing could be founded on this text.

The Bishop of Exeter, however, displayed his ignorance by quoting this text, and commenting on it, in his place in the House of Lords, last session of Parliament. It was also brought forward at a meeting of the General Assembly at Edinburgh. Such ignorance is unpardonable in the present day, when "Whiston's Josephus" may be had for a few shillings.

The Bishop of St. David's followed the Bishop of Exeter in the House of Lords, and seemed better informed on the subject. Probably he had read Josephus. He said, that "he would vote against the Bill, but not because the marriages in question were contrary to *Scripture*, (FOR THEY WERE NOT CONTRARY TO IT,) but because they were contrary to *ecclesiastical law*!" I believe that the Bible is the only statute-book of the "kingdom of heaven," that is, of the Christian church. Its office-bearers, whether they be Bishops or Presbyters, have no right to make laws in addition to those which its only King and Head has made. To do so is a feeble attempt to pull Him out of His throne. How great, then, must be the guilt of those who make laws for the Church, or administer laws, which are confessed to be contrary to those which its King has made! They are like him who "sits in the temple of God, showing himself to be God." They belong to Antichrist, and they and their churches will perish with him. The duty of the office-bearers of the Church is not *legislative*, but *judicial*—not to make laws, but faithfully to administer those which have been made by Him on whose "shoulders is the government."*

It has been argued that marrying a brother's *widow* is forbidden in Leviticus, chapter xviii. verse 16: "Thou shalt not uncover the nakedness of thy brother's *wife*." But this text does not say, "Thou shalt not marry the *widow* of thy deceased brother." If any man says that that

* See note B.

is its meaning, he must prove it; assertion will not do. He must give good reasons for having come to such a conclusion. I maintain that this text, like the words of John Baptist, just means what it says.

In this Christian land few can form any idea of the low state of morals in the heathen world. Sir William Jones, and many others well qualified to give an opinion on the subject, say, that Leviticus chapter xviii., verses 6—17, has no reference to marriage, but to the promiscuous intercourse amongst members of the same family, which was common among the heathen. For these abominations the land vomited out the people, and Jehovah said to Israel in this chapter, "Defile not yourselves in any of these things." He warned them not to imitate them in their abominations, lest they also should be vomited out.

You stated to me that you believed *that* was the true meaning of the passage.

I have said that I am not bound to prove that the text means no more than it says. To require me to do so, is what an opponent has no right to do. If he says that it forbids marrying the *widow* of a deceased brother, the burden of proving *that* must rest with him.*

Nevertheless I volunteer the following reasons which convince me that this text does not forbid marrying a brother's widow:—

1st. The surviving brother not only might marry his brother's widow, if disposed to do so, but he was commanded by the law of God to do it if his brother had left no children. If such a marriage had been contrary to the *moral* law, would He who is glorious in holiness, of purer eyes than to behold evil, who cannot look upon iniquity, and is the same yesterday, to-day, and for ever,—would He have *commanded* his creatures to break it? The thing is impossible. If such a marriage is said by any one to be a breach of the seventh commandment,

* And supposing that interpretation to be the correct one, the man who was required to marry his brother's widow, under the authority of Deut. xxv. 5, might *refuse* to do so on the authority of Levit. xx. 21, alleging that it was an *unclean thing*. And what righteous judge could blame him for not obeying what must in that case be regarded as two diametrically opposite and utterly inconsistent commands?

he must be prepared to say that God, for many ages, *COMMANDED His creatures to break that commandment*.

The only answer that I ever got to this argument was, "That God, during that period, *had suspended this law!*" To what fearful conclusions are men driven, when they are determined to hold by an unscriptural and Popish dogma! To say that the holy and unchangeable Jehovah ever did suspend his *moral* law—the transcript of his own Divine perfections—that law which is holy, wise, just, and good, is fearful—is blasphemous. I trust your friend, with whom you wish me to meet, will not bring forward such an answer as this. With a man who takes such a position I cannot argue. His ideas of Jehovah, and of His moral law, are so different from mine, that we have no common ground on which we can argue. God may suspend or abrogate positive and ceremonial institutions; He has abolished such, and has appointed others in their room; but He has never done so with His moral law. While God is God He will not do it. I would as soon renounce Christianity as believe it. "He is not a man that he should lie, nor the son of man that he should change." If He could suspend his moral law, what security could we have that He who is "glorious in holiness" would not, at some future period, become the patron of every vice—a Jupiter, or a Belial? If your friend, at the proposed discussion, should take this ground, I fear that I must here cut it short.*

Even if the prohibition had run in these words—"Thou shalt not marry thy deceased brother's *widow*," I would, without any hesitation, have concluded, that that prohibition belonged to the *judicial* law of Israel as a nation—not to the *moral* law—(and, of course, not binding on us,) seeing that God could not possibly command men to violate the *moral* law. But neither judicial nor moral law forbade a man to

* It has been well said by an able divine, "The *moral* law is not an arbitrary law. A law arbitrarily made may be arbitrarily repealed; but a law *merely declaring what is FIT* can never be repealed."

No; that law is unchangeable as its Divine Author. One jot or tittle cannot pass from it. It is morally impossible for God either to suspend, or repeal that law. Far less can He *command* the subjects of His moral government to break it.

marry his brother's widow. The judicial law commanded him to do so in the circumstances I have stated; but that law not being binding on us, no man is compelled to marry his brother's widow, in any circumstances, but he is at liberty to do it if so disposed.

Our Larger Catechism justly enumerates amongst the sins forbidden in the seventh commandment, "the prohibiting of lawful marriage, and undue delay of marriage;" and it is remarkable that a proof on the latter point is taken from what is recorded in Genesis, chapter xxxviii., as to what took place in the family of Judah, in consequence of his third son not having been, in due time, married to her who had been successively the wife of his two elder brothers. The compilers of the Catechism say, that this would have been a *lawful* marriage, and that the *delay* of it was a sin, though it does not appear that during the patriarchal dispensation such marriages were commanded by God, as they afterwards were, under the Mosaic dispensation. Yet these marriages were, in the patriarchal age, considered so right and so becoming, that the man who would not marry the widow of a brother was despised.

When the Sadducees told our Saviour of a woman who had successively been the wife of seven brothers, he did not give the least hint that that was contrary to the moral law.

2nd. If "uncovering the nakedness of a *brother's WIFE*," in the 16th verse, (Leviticus, 18th chapter,) means "marrying a brother's *WIDOW*," and if to do so be contrary to the Divine law, then the 20th verse, "thou shalt not lie carnally with thy *neighbour's WIFE*," must mean "thou shalt not marry thy *NEIGHBOUR'S WIDOW*." To be consistent, therefore, those who interpret *wife* to mean *widow*, in the 16th verse, must hold that the Divine law forbids a man to marry *ANY widow*. The terms in both verses are the same. If my opponent will not take this ground, and say that marriage with *any widow* is forbidden, he must give up, and acknowledge that marrying a brother's widow is not forbidden. The term "wife," in such close juxtaposition, must in each case have the same meaning.

I think these two arguments should be conclusive as to the assertion that marrying a brother's widow is forbidden.*

If my opponent cannot prove that marrying a brother's widow is forbidden; if, on the contrary, I prove that such a marriage is lawful, then it follows necessarily that marrying the sister of a deceased wife is not forbidden. No one pretends that *that* is directly forbidden. It is only inferred that if the brother's widow be prohibited, that the deceased wife's sister should also be prohibited.

I have, however, been told that the term "wife" is sometimes used for one "who had been a wife," and *possibly* that may be the case here. And so the whole now hangs on a bare *possibility*. But let us examine this last resource. In 1 Samuel, chap. xxvii., verse 3, we find these words, "David, with his two wives, Ahinoam the Jezreelitess, and Abigail the Carmelitess, Nabal's wife." This text has been quoted to me to prove that "wife" means "widow." But it proves no such thing. Abigail at the time referred to was not the *widow* of Nabal. She was one of David's wives. Who does not see that the last clause is elliptical, and for brevity's sake is made use of in place of "who had been the wife of Nabal?"

If the proposed discussion shall take place, I trust your friend will not start this objection unless he be prepared to show that in Leviticus xviii. 16, there is an ellipsis, as plainly as it can be shown that there is one in 1 Samuel, xxvii., verse 3.

Though the term "wife" should in some passages be used

* In Levit. xx. 21, a man is forbidden to take his brother's wife, with the addition, "it is an *unclean thing*; . . . they shall be *childless*." In Deut. xxv. 5, he is commanded, if his brother die without children, to "go in unto his brother's wife, and *take her to him to wife*, and perform the duty of a *husband's brother* unto her," and that with the *express design* of *raising up seed* to his childless brother. What must be thought of the blindness of those who cannot or will not see that the prohibition in Levit. xx. and the command in Deut. xxv. refer to different things; the first to taking a brother's wife *while he is living*, the other to marrying his widow *after he is dead*? If a man did the first, he was to be punished by being childless; if he did the second, he was to expect to be rewarded by having children who should perpetuate the name of his deceased brother. Surely this latter fraternal office could not be called "uncovering his brother's nakedness"! It was performing a sacred Heaven-enjoined duty to his house.

elliptically, and really mean "widow," yet surely no man will say that such is the *universal*, or even the *general* meaning of the word. Surely I will not be called to prove that "wife" means "*wife*." If I were called to do so I would just point to the text already cited, where Ahinoam and Abigail are called "David's wives," which they really were. Or I might refer to the words of John to Herod, as history informs us that Herodias was not the "widow," but the "*wife*" of Herod's brother.*

Indeed, if the subject were not a serious one, a person could scarcely refrain from smiling, when those who ought to know better gravely assure us that because Abigail is called Nabal's wife at the time she was David's wife, therefore "uncovering the nakedness of a brother's wife" must mean marrying a brother's widow.

As one argument, *if good*, is sufficient to establish a point, either of these two arguments, if it cannot be fairly answered, will prove what I have taken in hand to do, even though the other should be answered. I believe, however, that neither of them can be answered—at least, that has never yet been done.

But if an opponent should be able to reply to them, and prove ever so satisfactorily, that "uncovering the nakedness of a brother's wife," means "marrying a *brother's widow*," he has still to prove that marrying a *sister of a deceased wife* is also forbidden. Dr. Chalmers fell into the prevalent mistake as to the brother's "wife," and believed that marrying a brother's widow was forbidden, but he held that marrying the sister of a deceased wife was positively sanctioned. Had his great mind fully studied that part of the subject which we have now gone over, his views would have been more consistent than they were.

But still the one might possibly be forbidden, and the other be sanctioned. The sexes do not always seem to have been on the same footing as to marriage. We read of many godly men who had more wives than one at the same time,

* In the case of the "father's wife," in 1 Cor. v. 1, it appears by 2 Cor. vii. 12, that the father was living.

but we never read of a godly woman having more than one husband.* But I proceed—

II. To prove that marriage with the sister of a deceased wife is positively sanctioned. This is doing more than an opponent can ask me to do. All marriages that are not forbidden being lawful, positive sanction is not needful. But if it can be proved that these marriages are sanctioned, the ignorance and the guilt of those who forbid them must be the more aggravated.

Leviticus, chapter xviii., verse 18, "neither shalt thou take a wife to her sister, to vex her, beside the other *in her lifetime*."

A plain unsophisticated man would understand this to forbid a man to marry the sister of his wife in her lifetime, as that would vex her, but if the first died that he was at liberty to marry the other. That he was not to imitate Jacob who had two sisters, Leah and Rachel, his wives at the same time.†

Dr. Chalmers, like a man of honest mind and common sense, said, "In verse 18, the prohibition is only against the marrying a wife's sister during the life of the first wife, which of itself implies a liberty to marry the sister after her death, besides implying a connivance at polygamy."†

Many, of whom better things might have been expected, who profess to honour the memory of Dr. Chalmers, have shown but little reverence for it, by telling us that he did not think what he was saying when he penned this sentence. He knew well enough what he said, and he knew the grounds on which he said it; but I believe he did not know that he was to leave behind him so many to show their ignorance of the first principles of Scriptural exegesis, as it now appears is the case.

What ignorance is manifested by those who say that this

* And a man might put away his wife; but it was not *à converso*, lawful for a woman to put away her husband.

† All the prohibitions in Levit. xviii. are absolute and unlimited, except in the two nearest cases of collateral affinity, viz., the brother's wife, and the wife's sister. In the one, the prohibition ceases when the *brother* dies, in the other, when the *wife* dies. The perverseness of those who will insist upon interpreting a *conditional* prohibition as if it were an *absolute* one, is only equalled by their uncharitableness and want of reverence for the Divine authority.

text forbids a man to have two wives at the same time, though they should not be related to each other! * and what sort of minds must those have who arrive at that conclusion by the famous argument about the "curtains," which you so justly styled "*most absurd!*"

The state of these men has always forcibly brought to my mind the condition of the Romish priesthood, many of them men of the most cultivated minds, and masters in the art of reasoning, yet when they come to defend the errors of their church, they seem to an enlightened Christian to reason like children or idiots. God "has sent them strong delusions to believe a lie." Just so it is amongst ourselves with those who have undertaken to defend this dogma derived from the Church of Rome. The argument is this—

The text forbids a man to take a wife in addition to her sister (whom he already has) in her lifetime, as that would vex her.

But, according to Hebrew idiom, a curtain added to another is said to be a curtain added to its sister, because they are members of the *same* family, viz. the *curtains*.

Therefore, the text forbids a man, during the lifetime of his first wife, to marry another woman belonging to a *different* family than the one his first wife is a member of.

If men of learning argue in this way, those who have only common sense to guide them will infer, that the text forbids a man to marry a woman belonging to the *same* family as his first wife is a member of, while the first lives, and *only while she lives*.

Polygamy may be a very bad thing, but to infer that it is forbidden in this text is certainly most forced and unnatural—what no man, unless blinded by prejudice, and having a theory of his own to support at all hazards, would attempt.*

Dr. Eadie, in his able letter, has so plainly shown that such an interpretation is incompatible with the original Hebrew, and with all ancient versions, that I think no man who values his character as a scholar will again bring it forward.

* It was admitted by the opponents of Lord St. Germans' Bill, in Feb., 1851, that Levit. xviii. 18, recognised the permission of polygamy to the Jews, but *regulated* it by a prohibition against having two wives, who are in certain degrees of propinquity of kin to each other.

If at the proposed conference your friend shall say that this text forbids polygamy,—that all women are sisters, being of the family of Adam,—I hope he will bring forward some better argument than the "curtain" one.

I have already repeatedly said that I am not bound to prove that these marriages are lawful, or positively sanctioned, but that those who say they are forbidden are bound to prove that that is the case. Yet I voluntarily offer the following argument to prove that while this text forbids a man to have two sisters as his wives at the same time, it permits him, if the first should die, to marry her sister, her *real* sister, in the primary and usual acceptation of the word.

1st. The connection of this verse, (Leviticus, chapter xviii., verse 18,) with what precedes it, shows that the wife, and the person who in her lifetime is forbidden to be taken in addition, are really sisters. The female who is forbidden is not a stranger. She is one who might be regarded, during the life-time of the wife, as "near of kin." The general rule is, "Thou shalt not approach unto any that are near of kin to thee." But the question would naturally arise, "who are near of kin?" "How far does this prohibition extend?" The general rule is, therefore, branched out into particulars thus:—

- 1st, Thy mother.
- 2nd, Thy father's wife.
- 3rd, Thy sister.
- 4th, Thy son's daughter, or daughter's daughter.
- 5th, Thy father's wife's daughter, begotten of thy father.
- 6th, Thy father's sister.
- 7th, Thy mother's sister.
- 8th, Thy father's brother's wife.
- 9th, Thy daughter-in-law.
- 10th, Thy brother's wife.
- 11th, A woman and her daughter.
- 12th, A woman and her son's daughter.
- 13th, A woman and her daughter's daughter.
- 14th, Neither shalt thou take a wife to her sister, to vex her, beside the other *in her lifetime*.

How any man of common understanding can suppose that the term sister, (No. 14,) taken in connection with what goes before it, means *any woman*, because all women are "sisters" by their common descent from Adam, astonishes me much.

Admit that that is the true interpretation, and what wild work will we make of the context! The word "sister," (No. 3,) must also mean any woman of the family of Adam. "Brother's wife," (No. 10,) must also mean the wife of any man, for every man is a brother by our common descent from Adam. I think that neither you, nor the friend whom you propose to confer with me on this subject, will go that length; but if you have got a good principle of interpretation you must, as Benjamin Franklin says, go through with it. Am I not right in saying, that it will make very wild work?

From the 6th to the 18th verse of Leviticus, 18th chapter, the same subject is treated of. The 18th verse is evidently connected with what goes before it by the conjunction "neither." A child has made but little progress in grammar until he can tell that the use of this part of speech is to form this connection.

2nd. Seeing that the term "sister," in verses 9th, 11th, 12th, and 13th, is universally understood in its primary and common meaning, I hope your friend will be prepared to give a good reason for believing that the same word is to be understood in a secondary sense, and to mean *any woman* in the 18th verse.

3rd. Polygamy was not forbidden by the law of Moses. It certainly was, as Dr. Chalmers expresses it, "connived at" in the following passages, Exod. xxi. 10,— "If he take him *another* wife, her food, her raiment, and her duty of marriage, shall he not diminish." Deut. xxi. 15—17,— "If a man have *two* wives, one beloved, and another hated, and they have borne him children, both the beloved and the hated; and if the first-born son be hers that was hated: then it shall be, when he maketh his sons to inherit that which he hath, that he may not make the son of the beloved first-born before the son of the hated, which is indeed the first-born: but he shall acknowledge the son of the hated

for the first-born, by giving him a double portion of all that he hath."

If your friend shall maintain that Leviticus xviii. 18 forbids polygamy, I shall expect him to be prepared to explain these two passages consistently with that theory.

4th. Many of the best of the Old Testament saints were bigamists or polygamists. Elkanah, the father of Samuel, (1 Sam. i.) had two wives. He appears to have been a man of decided piety; and no hint is given that his sacrifices and prayers at Shiloh were rejected, which they would have been if he had been living in sin. David, the man after God's own heart, took Abigail, "and also Ahinoam of Jezreel; and they were also both of them his wives." (1 Samuel, chap. xxv. verse 43.) When he sinned in the matter of Uriah, Nathan reproved him, and God severely chastised him—not for taking another wife, but for taking *another man's* wife, and for having caused the death of her husband. Had David's sin consisted in taking another wife, in addition to those he previously had, his repentance would have manifested itself by his putting away the evil of his doings—by putting away Bathsheba. But her first husband being dead, David was allowed to retain her, and God gave him Solomon by her.

We read in 2 Chronicles, xxiv. 2, 3,— "And Joash did that which was *right* in the sight of the Lord all the days of Jehoiada the priest. And Jehoiada took for him two wives." This was done in the days of Jehoiada, therefore it was not wrong—all that Joash did in his days was *right*. Jehoiada, the High Priest, the expounder of the Divine law, took for Joash the two wives. Surely he knew the meaning of Leviticus, 18th chapter, 18th verse, and certainly he was too good a man to have wilfully set the prohibition at defiance, if he had understood it to forbid having two wives. Surely he was fully better qualified to decide on the meaning of that text than some modern D.D.'s who make use of the "curtain" argument.

Certainly, therefore, that text did not forbid having two wives at the same time, if they belonged to different families, but only if they were sisters.

5th. Those who broke the law contained in this verse were

to be put to death. (Leviticus, 18th chapter, 29th verse.) But no man, during the Mosaic dispensation, was put to death for having more than one wife at a time. Polygamy, therefore, was not here forbidden.

6th. The Jews, both in ancient and in modern times, have understood this verse as forbidding them to have two sisters as wives at the same time, as Jacob had; but that it allows them to marry the sister of a deceased wife. This can be proven from the writings of the Rabbis for the last two thousand years. Dr. Adler, the chief Rabbi of the English Jews, in his evidence before the Royal Commissioners, stated, that this is their understanding of it; and mentioned that the practice is, if a wife should die, leaving a family young, the widower is allowed to marry much earlier after her death, if he takes her sister, than he would be allowed to do if he were to take any other; as the sister of the deceased is regarded as being the most suitable person for bringing up the children.

7th. The Syriac, Chaldee, Septuagint, Samaritan, and Latin versions, all prove that their translators understood the verse as the Jews have done in all ages.

8th. The ablest commentators and linguists have all been of opinion that the word "sister" is to be understood here in its primary meaning, as denoting that both the females referred to are descended from the same father and mother.

Dr. Eadie, in his able letter, says, "If I have erred, it is in good company. I have the countenance of Luther and Melancthon, on a similar point,—of Chalmers, Whately, Thirlwall, Wesley, Bunting, Robinson, and many more divines, with all the great names in Hebrew philology and Commentary—men who, released from the solemn frippery, tedious casuistry, and perplexing despotism of the Canon Law, form their own independent conclusions as to the meaning of the Sacred Records."—"Dr. Symington denies candour to any man who holds not his opinion. I have looked upon the matter simply as one of Hebrew philology. Want of candour is an accusation that applies not to me, nor to John Calvin, nor to George Bush, who hold the same grammatical analysis, but with a different deduc-

tion, nor to the whole army of dead and living oriental scholarship, who justify the correct reading of the English version."

Again, "I ask for the name of any Hebrew scholar, whose name is of any authority, that ever held or vindicated Dr. Symington's view. There never was one. A Hebrew tyro could not commit the blunder."*

While the most learned men have given it as their decided opinion, that "sister" must be taken in this passage in its primary and usual meaning, the best practical divines have been of the same opinion; and many pious Ministers and private Christians have contracted such marriages.

Good Matthew Henry, in his exposition on this verse, says, "That article, verse 18th, which forbids a man to *take a wife to her sister*, supposeth a connivance at polygamy, as some other laws then did, (Exod. xxi. 10, Deut. xxi. 16,) but forbids a man marrying two sisters, as Jacob did; because between those who had before been equal, there would be apt to arise greater jealousies and animosities, than between wives that were not so nearly related. If the sister of the wife be taken for the concubine, or secondary wife, nothing can be more vexing in her life, or as long as she lives."

Thomas Scott, the pious and, in general, very judicious commentator, says, on this verse, "Some think that this verse contains an express prohibition of polygamy—supposing the word *sister* merely to signify a wife, which the person spoken of had already married. But though the Mosaic law contains no explicit allowance of polygamy, yet there is no other passage which favours the interpretation of this text as a direct law against it; and many things in the whole subsequent history imply a connivance at it. The context also seems to suggest a more literal interpretation, namely, the marrying of two sisters, either at once, or the one after the other. This conduct in Jacob proved a source of vexation both to Leah and Rachel, who were more jealous of each other than they were of the hand-maidens they had willingly given to their husband; and, perhaps, it would be found on trial, that those who had lived in the intimate equality of

* See note C.

this near relationship, would be more apt to rival each other, if married to the same man, than strangers would be—at least their jealousies and bickerings would be more unseemly and distressing.”

This is all clear and consistent. But the good man had gotten the idea, that “uncovering the nakedness of a brother’s WIFE” (verse 16th), meant “marrying a brother’s WIDOW,” and he got perplexed. Oh how much perplexity might men save themselves if they would take God’s Word simply as He has given it, without forced and unnatural interpretations! In the earlier editions of his Commentary, Scott had the following passage added to the above:—

“The words ‘in her lifetime,’ may be joined in construction with ‘to vex her,’ as meaning *to vex her during all the rest of her life*; otherwise they would seem to imply an allowance to marry the sister of a deceased wife, which we cannot suppose was intended, seeing a woman might not, in ordinary circumstances, marry the brother of her deceased husband.”

In a future edition of his Commentary, he altered this passage, evidently having been dissatisfied with it, as he well might, and it stood thus—“As a woman might not, in ordinary circumstances marry the brother of her deceased husband, it can hardly be supposed that it was allowable for a man to marry the sister of his wife, even after her decease; *though this verse seems not to contain a prohibition of it.*”

Having assumed a false principle in expounding the 16th verse, the good man felt great difficulty in reconciling with it the true exposition he had given of the 18th verse. He evidently felt the difficulty he had brought himself into, and in another edition he left out this last quotation also, allowing only the first passage I have quoted to stand. This showed that his more matured judgment was the very same as that of Matthew Henry and Dr. Chalmers.

While such are the opinions of many of the best divines, multitudes of private Christians, eminent for their piety, and ministers of learning and piety, have acted upon them, by contracting such marriages.

Amongst the Presbyterian ministers in America who have done so, I need only mention the name of Dr. Sprague, of

Albany, whose admirable “Lectures on Revivals,” and his “Christianity contrasted with false Religions,” have been published in this country by Mr. Collins, of Glasgow, and his “Letters to a Daughter,” by the London Tract Society.

You also mentioned to me the name of another minister from that country, who told you that his present wife is the sister of his first wife.

I understand somewhere near to forty clergymen of the Church of England are in the same state at present, besides a number of Dissenting ministers.

The Canons of the Church of England forbid such marriages, but these Canons were framed as the Church was emerging out of Popish darkness, and were founded too much on the Canon Law of the Church of Rome. Many of the best members of that church, being convinced that they are on this subject contrary to Scripture, are very earnest in their representations to Parliament to have the law put on a better footing.*

That eminent theologian, the late Dr. Pye Smith, as representing the English Independents, was to have given his evidence in favour of the alteration of the law before the Royal Commissioners, but his increasing infirmities, especially his deafness, prevented him. He was, however, so earnest on the subject that he requested a brother in the ministry, the Rev. Thomas Binney, to go in his room. Dr. Cox was deputed by the Baptists to represent them.

Not one of the Church courts of the United Presbyterian Church have petitioned against legalising these marriages, while some of their ministers have written in favour of that

* It is perhaps not improper to mention that such unions have been solemnised in several of the British colonies. The ministers who solemnised them were quite aware that (in those colonies) for legal purposes it was no more a marriage than if no rite had been performed. But they acted upon the principle that they were *bound* to give the solemn and sacred sanction of marriage to all persons whom the *Bible did not forbid* to marry, and whose marriage contravened no natural or moral law which the officiating minister could discover. The municipal law they did not, in such a case, consider as binding conscience not to do what it prohibited, inasmuch as, with their views, they obeyed a higher law than they violated, in marrying persons whom the municipal law (as they considered) improperly hindered, and who, if not married, might do worse.

being done, and state that their brethren are of the same views as themselves.

It is not only want of candour that is charged on those who do not see that these marriages are forbidden in Scripture. Something worse is laid to their charge. Dr. Symington speaks of such marriages being the introduction of "a low and lax morality." Mr. Montgomery, Free Church minister at Inverleithen, speaks of the morality of those who differ from him as being fit only "for the wynds of Glasgow." Such statements only make the men who utter them eminently ridiculous. However respectable their characters may be, they might learn holiness, they might imbibe purity itself, from the writings of Henry, Sprague, Chalmers, and many others who hold views very different from theirs. And what is *their* skill in philology that *they* should expect the world to think them more than a match for "the whole army of dead and living oriental scholarship?"

Dr. Eadie says, "Mr. Justice Story—a name almost as exalted in America as Blackstone at home—says, 'such marriages are common in almost all the States of America. . . . *In my whole life I never heard the slightest suggestion against them founded on moral and domestic relations.*'"*

The truth is, the views of many on the subject of marriage are drawn from a very different source than the Bible. What our Reformers said in reference to another subject may be applied to these views: "They have flowed from the Pope, and from the Canon Law only," and "they ought not to have any place in this light of Reformation." †

* Lord Chief Justice Campbell bears the following testimony to Justice Story: "I survey with increased astonishment your extensive, minute, exact, and familiar knowledge of English legal writers in every department of the law. A similar testimony to your judicial learning I make no doubt would be offered by the lawyers of France and Germany, as well as of America, and we should all concur in placing you at the head of the jurists of the age."

† In the Vatican Septuagint, published by the authority of the Church of Rome, there is a FORGED CURSE against the marriage in question, interpolated at Deut. xxvii. 23, in the following words:—'Ἐπικατάρατος ὁ κοιμώμενος μετὰ τῆς ἀδελφῆς τῆς γυναίκος αὐτοῦ. This curse may be found in almost every copy of the Septuagint, though admitted to be a forgery; and may serve to open the eyes of the clergy of Scotland as to the origin of the prohibition in question.—See *Expostulatory Letter to Cardinal Wiseman, by the Rev. E. W. Grinfield, M.A.* Pickering, 1850.

That apostate church which forbids those to marry whom God has not forbidden (1st Timothy iv, 3), prohibited not only the marriages in question, but "as far as the seventh degree of collateral consanguinity." To quote from Dr. Eadie, "Nay, there was a species of spiritual affinity invented, which Lord Coke says, authorised 'a divorce, because the husband had been godfather to a wife's cousin.' A man's own children and his godchildren were prohibited from intermarrying.* By the end of the fourth century the marriages of cousins-german was expressly prohibited. The fourth Lateran Council allowed the marriage of third cousins. In that subtle and sparkling treatise the "Ductor Dubitantium," Jeremy Taylor fights a hard battle for the legality of the marriage of first cousins. The reason of such prohibition is obvious—then every marriage required a dispensation from Papal authority, every dispensation being well paid for, and still, when a man marries his wife's sister in Popish countries, a dispensation from the Pope is applied for, and, as Bishop Wiseman admits, is not withheld." †

When it was proposed to alter the law, so as to allow first cousins to marry, the outcry against it was tenfold greater than what has been against the alteration now proposed. Richard Baxter, in his "Christian Directory," having discussed the legality of the marriage of cousins, concludes for their legality, but recommends that they should be avoided, "because many great and learned divines were of a different opinion!"

I believe that the time is very near at hand when the

* The Rev. Dr. Pusey supposes that most people would object to such marriages now!

† The following is one of the Canons of the Popish Council of Trent:—"If any one shall say that the Church has not power to constitute impediments dissolving matrimony, or that it has erred in constituting them, let him be accursed." Another Canon says:—"If any man shall say that those degrees of consanguinity and affinity only which are expressed in Leviticus, can hinder matrimony, or dissolve it when contracted, and that the Church cannot grant dispensation in some of those degrees, or ordain that *more shall hinder or dissolve*, let him be accursed." This is the very power so strenuously claimed at the present time by the civil and ecclesiastical rulers of this country, and it is for the people of Scotland to decide whether they will by sanctioning this assumption, rank amongst the "worshippers of the beast."

Romish Antichrist is to be destroyed. When that takes place all those governments (the scarlet-coloured beast, with seven heads and ten horns, on which the harlot rides, Revelation, xvii.), which have supported her, and have given civil sanction to her unscriptural prohibitions, shall perish with her. "I beheld even till the beast was slain, and his body destroyed, and given to the devouring flame." (Dan. vii. 11.) Scott, in his commentary on Revelation, xv. 5—8, where the angels are represented as going forth with the vials of the wrath of God, to pour them out upon the earth, very truly observes, "It is also highly probable that the same judgments by which the Antichristian power and other enemies of the Church shall be destroyed, will be employed to purify even the less corrupt parts of it; and in proportion to the degree in which unscriptural usages are contended for and imposed, or Scriptural truths and duties are neglected, even professed Protestant churches will drink of the cup." Let our civil rulers, and our ministers and elders, therefore take warning. My prayer is that every remnant of Popery may be removed from the statute-book of the nation, and from our Confession of Faith. "Every plant which our heavenly Father hath not planted must be rooted up." "I heard another voice from heaven, saying, Come out of her, my people, that ye be not partakers of her sins, and that ye receive not of her plagues." (Rev. xviii. 4.)

Our excellent friend, the Rev. Mr. —, when I met with him at your house, nearly three years ago, being the first time that you and I had this subject talked over, dwelt much on "relationships by affinity being the same as those by consanguinity," and that as a man may not marry his own sister, he ought not to marry the sister of his deceased wife. To me this view is neither supported by Scripture nor reason. If I should grant that these two relationships are the same (which I do not), still I would hold that that can only be the case while the wife who formed the connection lives.

Relationships by *consanguinity* are different from those by *affinity*.* The former are natural and necessary. They begin with the existence of the parties, and can only end by their

* See note D.

deaths. Relationships by affinity do not begin so soon as the others, and may terminate while the parties are alive. A sister is a sister from her birth, and continues a sister till her death. A wife's sister only becomes the sister-in-law of a man when he marries. And if the marriage should be dissolved by the death of the wife, she ceases to be his sister-in-law. A ship has originally no connection with an anchor. At a certain period they are connected by a cable. But if the cable should be cut or broken, it is evident that the connection will cease. Just such is the condition of the parties in question. The woman originally was not connected with the man. She became his sister-in-law when he married her sister. But the marriage having been dissolved, she again stands precisely to him as she did before marriage took place. The tie which connected them has been broken.

A widower may continue to speak of the mother, or the sister of his deceased wife as his "mother-in-law," or his "sister-in-law," but he does so merely from previous habit. A "mother-in-law" is a wife's mother. But a man who has no wife cannot have a "wife's mother." If he were to try to speak correctly, he would say, "the mother of my late wife." If he should marry a second time, and speak of his "mother-in-law," every one would understand him to mean the mother of his *living* wife, because they know that the mother of the first does not now stand in that relationship to him.

But a marriage may be dissolved by divorce as well as by death. If a man, for just cause (which our Saviour allowed), should divorce his wife, would any one say that her father and mother, her brothers and sisters, were still as nearly related to him as his own? No. The connection has ceased. The tie has been broken.

Mr. — also said, "that if such marriages were allowed, a widower might not be able to get the sister of a deceased wife to take charge of his family."

But shall men, for such a reason as this, even if it were true, forbid what God has sanctioned?*

* No supposed benefits to one part of the nation can justify the depriving the other portion of their natural or scriptural rights. It may be, and no

But is there any truth in this inference? I said to Mr. —, that on that principle a widower should be prohibited from marrying any one, as his being in a capacity to do so might prevent him getting an unmarried female to act as his house-keeper, or as governess to his children. And though there is no law to prevent a man marrying one whom he has received into his house to fill such a situation, I never knew of an instance in which a widower had found difficulty in getting a person on that account; that I had known cases in which widowers had married those who had been governesses to their children, and these marriages had tended to the happiness of all concerned; and that there could be no more difficulty in getting the sister of a deceased wife, than in getting any other unmarried female, as they would both be on the same footing.

Mr. — replied, "The cases are different; there is more likelihood to be familiarity between a brother-in-law and a sister-in-law, than between strangers." My opinion was different from his as to that; but the only way to prevent improper familiarity is to allow the parties to marry. Those who forbid lawful marriages not only sin by putting themselves in God's place, but they must be answerable to Him for all the sin that their prohibitions are the cause of.

I am surprised that one of Mr. —'s standing should have made use of such an argument. If he had Scripture on his side he did not need it. If he had not Scripture, such an argument, from what he thought expedient, was little worth.

Still more futile and ridiculous was the argument brought forward by a Mr. Anderson Kirkwood, at the Glasgow meeting:—"Poison is now the favourite agent of murder,

doubt is, very agreeable to the slaveholder to live in ease and abundance on the labour of others cruelly held in bondage, but this does not justify him in doing so. David would not drink of the water procured by his brave and devoted followers at the risk of their lives, but poured it out before the Lord. "It is," said he, "the blood of the lives of these men."—2 Sam. xxiii. 17. It was too high a price to pay for his enjoyments. And, in the case now under consideration, by prohibiting a scriptural marriage, the factitious happiness of a few families would be procured at the cost of the real misery of multitudes of others.

and it will be no difficult matter to get quit of a wife if the husband and the sister-in-law conspire together for the purpose. (Hear.)" According to this reasoning, because some men have poisoned their wives, that they might be at liberty to marry others, a law ought to be passed to prohibit men from marrying a second time, lest having it in their power to do so, they should be tempted to poison their first wives! It must be a bad cause which stands in need of such silly arguments.

I trust that the friend whom you intend to meet with me will avoid such arguments as flow only from what he may think expedient, and confine himself to Scriptural argument, admitting the principle I laid down at the commencement, *that every marriage not forbidden by God is a lawful marriage.* "To the law and to the testimony; if they speak not according to this word, it is because there is no light in them." (Isa. viii. 20.) "Every word of God is pure,—add thou not to His words, lest He reprove thee, and thou be found a liar." (Prov. xxx. 5, 6.)

The late Mr. Shiel—who, to manifest his purity, on one occasion expressed great abhorrence at the idea of a young female reading the Bible, as she could not but have her mind polluted by imbibing impure ideas from it—like a true son of the Mother of Abominations, was strenuous in his opposition against the proposed alteration in the law. In his place in Parliament, he drew a picture of the distress a dying wife would suffer, if the law were altered, by her knowing that her sister's head was afterwards to lie on her pillow. This was all Irish balderdash. How could she know that her husband would ever marry again? And how could she know that of all the women in the world her sister would be his choice, and that that sister would accept of him? And why should his marrying her sister cause her grief, which his marrying a stranger would not cause?

I have known of dying wives leaving it as their charge to their husbands, to marry again as soon as possible, and so secure suitable persons to be the mothers of their children; and I have no doubt that many a dying wife would close her eyes more peacefully, if she had reason to hope

that a beloved sister, and not a stranger, would be the future mother of her children.

I have no doubt, also, that when these marriages take place, they in many cases give much satisfaction to the wife's relations. When a connection that they have had much enjoyment in has been broken by the death of the wife, it must give them much satisfaction to have it renewed by the widower again marrying a member of their family. This will especially be the case where the deceased has left children. The jealousy which the relations of a first wife often have of her who is the stepmother of the children is thus obviated. Such are the arguments from expediency which have been brought against these marriages.

Arguments in their favour have been brought from the same source.

One is that to which I have just referred, and which, as I have stated, Dr. Adler says the Jews lay much stress on, viz., that the wife's sister is the most suitable person to take charge of the young family.

It is also said that a man is likely to see in the sister of his first wife more of the same qualities which drew forth his affections to her than he is likely to see in any other; their parentage, education, and training, being the same; and that, from the connection previously existing between them, they are likely to be more intimately acquainted with each other's temper, character, and habits, than with those of strangers: so that the probability of the union being conducive to happiness is more likely with a deceased wife's sister than with any other woman.

But, as I have already stated, we have nothing to do with expediency on the one side or the other,—“To the law and to the testimony.” If God has forbidden such marriages, they can never be expedient. If He has not forbidden them, it cannot be expedient in man to forbid them, and he has no right to do so.

If the Free Church were to hold that cousins should not marry, that a man's own children and his godchildren should not marry, and that ministers of religion should not

marry; if she not only, by ecclesiastical discipline, enforced these prohibitions upon her own members, but agitated every deacon's court in her communion to get up petitions to the Legislature, and send them from door to door for signatures, to enforce these prohibitions on the members of other churches who believed such prohibitions to be unscriptural—could you remain a minister in her communion, even though you were so circumstanced that these prohibitions did not affect you personally? I think you could not remain in her. How then can I, who believe that the prohibition in question is just as sinful, and is derived from the same Popish source as the others, continue to act as an Elder in her communion? I have done so for nearly three years contrary to the dictates of my conscience, and I can do so no longer. I know that “meat commendeth us not to God: for neither if we eat are we the better, neither if we eat not are we the worse.” Yet I doubt if an enlightened Christian would see it to be his duty to continue a member of a Church which prohibited her members from eating certain kinds of food—which God hath created, to be received with thanksgiving of those who believe and know the truth, (1 Tim. iv. 3) every Friday in the year, and during the season of Lent; and not only so, but petitioned the civil power to prevent the members of other churches from doing it. Surely prohibiting marriages which God has not prohibited, is a much more serious matter in its consequences than prohibiting food which He has not prohibited, and those who do so must incur greater guilt.

Much has been said, and very justly, about the arrogance and intolerance of the Church of Rome; but has not the conduct of the Free Church in this matter fully equalled anything that the Church of Rome ever did?

By adding to the prohibitions of God's Word, has the Free Church not acted like the Man of Sin, who, “sitting in the temple of God, showeth forth himself to be a God;” (2 Thes. ii. 4) that is, assumes authority that belongs only to God? Has she not gone to the Canon Law of that Man of Sin, and taken this prohibition from it?

There are in England about six thousand families formed

by these marriages. Many of those who have contracted these marriages are people of the highest Christian character. Amongst them are clergymen of the Church of England, Dissenting ministers, lawyers, medical practitioners, merchants, &c., of the highest respectability. They, their friends and neighbours, petition that they may be relieved from the position they have been placed in by Lord Lyndhurst's Act, and the Free Church agitates, and her ministers, from the pulpit, exhort people to sign the petitions which have been prepared, and send them from door to door for signatures. In all this she has, however, not been very successful.

Immediately after the Disruption, the Free Church sent a deputation to the English Dissenters, to collect money amongst them for building churches, and were very kindly received. These same Dissenting ministers, and their people, now petition the Government that they may be relieved from Lord Lyndhurst's cruel and Popish Act, and the Free Church, professing to be wiser and more learned than these Dissenters, tells them that, if she can help it, their petition shall not be listened to. A little more modesty, and less intolerance, would become her better.

To force her own interpretations on other Christian communions—on those who, in the opinion of many, are better qualified to explain the Word of God than the ministers of the Free Church are, appears to me to equal all that the Church of Rome ever attempted.

These remarks do not apply to you personally. You have said to me, that the "curtain" argument is "most absurd," and you have admitted that the prohibition as to a brother's wife does not prohibit marriage with a brother's widow. I am satisfied that amongst the ministers of the Free Church there must be many who hold the same views. It is their loss not to have the moral courage openly to avow them.

For yourself I entertain high esteem and warm affection. I have been very happy as a member of your congregation, and as a member of your session. I honour and esteem my brethren the elders and deacons. Some of them I know hold the same views on this subject as I do. If they can continue to act as office-bearers, I cannot do so. It is fifteen months

since I tendered my resignation. During that time you have often told me that there is nothing to prevent me from acting as an elder, though my views are different from those of the Church. I have never been able to see it in that light.

I believe that the Free Church has sinned heinously, and I cannot act as an elder until she repents. Indeed, it is a question with me if I can continue a private member of her communion. If she should repent, she will bring forth fruits meet for repentance. She will not be ashamed publicly to acknowledge before the whole world that she has done wrong; and she will, as far as is in her power, undo the evil that she has done. She will petition Parliament that these restrictions on marriage, which have been derived, not from the Word of God, but from the Canon Law of the Man of Sin, shall be removed from the statute book. England is the only Protestant country in the world that retains them.* Indeed, till Lord Lyndhurst's Act was passed, a few years ago, the marriages in question were not against the statute law of England—they were only against the canons of the church.†

For some time past I have been much grieved with many things done by the General Assembly of the Free Church, and more especially by some of its committees. These, though very grieving, would not of themselves have induced me to demit office. They may, however, have strengthened my resolution to do so. Many of her members, I know, have been much grieved at the doings I refer to, but I forbear to enter upon a new subject.

And now, my dear sir, I bid you farewell as a member of your session. I shall never forget your kindness as my pastor, and as the moderator of the session. More especially, I shall never forget your sympathy and your prayers in a time of deep distress, when my spirit was overwhelmed within me.

May the God and Father of our Lord Jesus Christ bless you with all spiritual blessings. May He lead you into all

* See note E.

† Since the above was written I have been informed that these marriages were contrary to the statute law before 1835, but that the statute left the power of dissolving them to the Ecclesiastical Courts. They were scarcely ever questioned, and consequently were in effect permitted.

truth needful to you as a Christian, and needful to you as a pastor, and as a ruler, in the Church of God. May all ministers be taught of God, and laying aside all preconceived opinions, may they diligently search the Scriptures, that they may know what the mind of the Lord is.

I am, &c.

A few days after the foregoing letter was delivered, the writer of it received a note from the excellent Minister to whom it was addressed, requesting that he would call on him. He did so, and that part of the letter which treats of the scriptural argument was read over. The Minister then said he believed it would be very difficult, *if not altogether impossible*, to prove from Scripture that these marriages were unlawful.

The Elder said that he had retained a copy of the letter, and intended to publish it, and have it extensively circulated over the Church. The Minister replied that he thought it would be right to do so.

The Minister stated that he had not given up his intention of getting a brother in the ministry to converse with the Elder on the subject, but that various circumstances, up to that time, had occurred to prevent its being done. He also mentioned the name of a rev. gentleman whom he intended to ask to do so. The Elder replied that he would have much pleasure in meeting with the gentleman he named, as, from his Christian character and very amiable manners, he was satisfied that the discussion would be conducted in a proper spirit.

As several months have elapsed since the Elder had this interview with his Minister, and as the proposed conference has not yet taken place, and probably never will, he thinks that the time has now come when the letter should be published, and the subject discussed in another way.

NOTES.

Note A, page 4.

THE author here assumed that the Westminster Confession of Faith forbids these marriages, as it is generally understood to do. He has, however, very grave doubts as to that being the case. The passage is as follows:—

“Marriages ought not to be within the degrees of consanguinity or affinity forbidden in the Word: nor can any such incestuous marriages ever be made lawful by the law of man, or consent of parties, so as these persons may live together as man and wife. The man may not marry any of his wife’s kindred nearer in blood than he may of his own, nor the woman of her husband’s kindred nearer in blood than of her own.”

The compilers of the Confession bring forward, in proof of what they here teach, what John Baptist said to Herod, as to the unlawfulness of his marriage with Herodias. The proof certainly does not teach that that marriage would have been unlawful if Philip had been dead. Can the Confession be held to teach more than the Scripture proof teaches, which the compilers adduced in support of their doctrine? The Confession does not say, that “the man may not marry any of his *deceased* wife’s kindred, &c.; nor the woman any of her *deceased* husband’s kindred, &c.” As John did not say, a woman might not do so, the Confession does not say she may not. May the meaning of the Westminster Assembly not have been, that no consent of parties could render such a marriage as that of Herod and Herodias lawful? By adducing the words of John in proof of their doctrine, along with the quotations from Leviticus, may they not have intended to teach, that Moses there prohibited to the Israelites such marriages as those of Jacob and Rachel, and Herod and Herodias. In the first of these cases, “the man married one of his wife’s kindred nearer in blood than he could of his own;” and, in the latter, “the woman married one of her husband’s kindred nearer in blood than she could of her own.”

There seems to be ground for believing that the Westminster Assembly intended only to teach that God had forbidden his ancient people to enter into such marriages as these, seeing that that was plainly the teaching of the Reformed Church of France. The author has in his possession a Bible translated by the founders of that Church, and printed at Paris in the year 1567. Opposite to the 18th chapter of Leviticus, there is a table of degrees of consanguinity, and another table of degrees of affinity there prohibited, and reference is made to the verse in which each of the forbidden degrees is specified. In the second of these tables we find, Verset 16—“La femme du frère *vivant*.” Verset 18—“La sœur de la femme *vivante*.” That is, Verse 16, “The wife of the *living* brother.” Verse 18th, “The sister of the *living* wife.”

The founders of the French Church agree with the Westminster Assembly, that *there are* degrees of affinity as well as of consanguinity prohibited, but

they held that the prohibition as to affinity was in force only while the first husband or first wife lived.

Is it not very probable, that when the Church of Scotland adopted the Westminster Confession, she understood it as it plainly reads, without interpolating the word "deceased" before "wife's kindred," and before "husband's kindred?" Is it not very probable that her views on this subject were the same as those of the French Church? We know that from the time of the first Reformation to the time of the second Reformation, there was a great deal of intercourse between the two churches—many Scotchmen, such as Welsh, Cameron, and Boyd of Trochrig, having been professors of divinity and ministers in the French Church.

The compilers of the Confession must either have known that Philip was alive when Herodias married his brother, or they ignorantly supposed that he had been dead. Have we any right to assume that they were so ignorant as some assume they were? If they knew that he was alive, the fact of their bringing forward what John said, as a proof of their doctrine, shows that they intended to teach no more than that God prohibited such a connection. It would have been absurd to have brought it forward as a proof that Herod might not have married his brother's *widow*.

If it be the case, as is generally assumed, that they were ignorant as to Philip's being alive, and thought that Herodias had been a widow, is the church to be bound by their mistake to the end of the world?

"The Bible, the Bible alone, is the religion of Protestants."

Have we, in the present day, any right to alter the language of the Confession, by interpolating the word "deceased," in order to give some pretext for assuming the ignorance of its compilers?

Note B, page 9.

The views of the Bishop of St. David's on this subject are identical with those of the Church of Rome, only with this difference, that the bishop will not grant a dispensation; but the Church of Rome never refuses one, if the proper price be paid for it. The Church of Rome, knowing that the prohibition is entirely one of her own making, holds, as a matter of course, that she can dispense with it when she pleases. The authority which enforced it can also dispense with it.

When Cardinal Wiseman was examined before the Royal Commissioners, he was asked, "Do you construe that passage in Leviticus (xviii. 18), as prohibiting marriage with a deceased wife's sister, or merely as saying that a man should not take two wives together at the same time, being so related?" His answer was, "Certainly that verse appears to have the latter meaning, that two sisters should not be living together in the same house as wives of the same person."—"Is such a marriage held by your church as prohibited in Scripture?" "Certainly not—it is considered a matter of ecclesiastical legislation."

Cardinal Bellarmine says,—“Moses did not prohibit marriage with the sister of a wife, unless in her lifetime; and consequently did not prohibit it with the sister of a deceased wife.”

Cardinal Cajetan says, "From the fact that the prohibition of marriage with the sister of a wife is restricted to the lifetime of the wife, it is evident that under this prohibition is not comprehended marriage with the sister of a

deceased wife, the limitation, 'in her lifetime,' leaving the marriage free after her death."

Will no Presbyterian divine be as candid as these cardinals of the Church of Rome, and as the bishop of the Church of England, and say, "I do not object to these marriages because they are contrary to the word of God (for they are not contrary to it), but because I believe they are contrary to the Westminster Confession of Faith?"

The Church of Scotland has a law that parties intending to be married shall be proclaimed in their parish Church for *three* successive Lord's days, but she grants a dispensation as to *two* of these days, to those who can afford to pay for it. The Church of Rome regards the marriages in question in much the same light as the Church of Scotland does proclamations. The forbidding the marriages is not of divine authority, but "a matter of ecclesiastical legislation." *Query?* Has either Church any authority to make laws, and then grant dispensations to break them, on being paid for it?

Note C, page 21.

The following are a few testimonies of eminent biblical critics, &c., to the meaning of Leviticus xviii. 18:—

"The Jews regarded the marriage with a wife's sister as not unlawful. This marriage Moses permits: but prohibits, on the other hand, the marriage of two sisters at once."—*Michaelis*.

"Moses does not prohibit marriage with the sister of a deceased wife."—*Rosenmüller*.

"'In her lifetime,' because when she was dead, he might marry her sister."—*Menochius*.

"Thou shalt not marry two sisters at the same time, as Jacob did Rachel and Leah; but there was nothing in this law that rendered it illegal to marry a sister-in-law when her sister was dead."—*Dr. Adam Clarke*.

"I have no doubt that, according to Leviticus xviii. 18, (Hebrew and English), marriage with a deceased wife's sister is permitted."—*Rev. Dr. M'Cauley*.

"From all I have been able to learn on the question, 'whether a man may marry a deceased wife's sister,' my opinion is, that neither does holy Scripture anywhere forbid it, nor ever did the Jews."—*Rev. Dr. Samuel Lee*.

"It is not only not considered as prohibited, but it is distinctly understood to be permitted; and on this point neither the divine law, nor the Rabbis, nor historical Judaism, leaves room for the least doubt."—*Dr. Adler, the chief Rabbi of the Jews of England*.

"This precept evidently limits a man's marrying a wife's sister while she liveth, but does not prohibit him doing it when his wife is dead."—*Boothroyd*.

"The received opinion is, that this law is understood of two sisters; that one sister is not to be taken to another while they live; but after the death of the one, it was lawful to take the other."—*Willet, Hexapla*.

"The meaning of the precept evidently is, that no man should marry his wife's sister while that wife liveth."—*Bishop Patrick*.

"The text expressed in this manner shows that it is not permitted to have two sisters, as wives, at the same time, as Jacob had Rachel and Leah, *but only in succession*; and this is the sense which appears the most clear, and the most probable."—*Calmet*.

"The meaning, therefore, is this :—Thou shalt not take a woman as a wife at the same time as her sister; for when the wife was dead, it was allowed to marry her sister."—*Pagius*.

Lord Denman, in his recently published pamphlet, states that the Bishop of Exeter saw so plainly that the English translation of Leviticus xviii. 18 sanctions these marriages, that he questioned the accuracy of our version, referring to the Hebrew Professors, both of Oxford and Cambridge. But "neither of these learned interpreters of the Hebrew idiom appear to have surmised that the restriction of the Bible translation to the lifetime of the wife, is not the fair construction of the passage according to that idiom. Nor does any of the rev. prelates, not even the Bishop of Exeter, in terms impugn the substantial fidelity of our translation."

Is it not strange that there should be any Scotch Presbyterians found advocating a cause which has the Bishop of Exeter and Dr. Pusey for its most strenuous supporters. Had the people of Scotland no reason for expecting that presbyterian ministers, in place of joining semi-Romanists, would have been found in the same ranks as all evangelical men in England, clergy and laity, churchmen and dissenters, who, renouncing popish dogmas, take the Word of God as their only rule of faith and practice? Had they no reason to expect that they would have lent their aid to such a man as Mr. Spooner, whose exertions to get the government grant to Maynooth withdrawn, are so well known? That earnest Protestant said, in his place in Parliament,—

"His first duty was to ascertain whether there was anything in the Word of God which forbids the marrying of a widower with the sister of his deceased wife. He looked carefully, he endeavoured earnestly to come at the truth, and he was perfectly convinced that there was nothing in the Scriptures which prohibited that act."

He acted and spoke as every true-hearted Protestant will do.

A petition to the House of Lords, signed by nearly thirteen hundred clergymen of the Church of England, was to this effect :—"Showeth—That, in the opinion of your petitioners, the existing law which prohibits marriages between a widower and his deceased wife's sister, is an inexpedient law, and ought to be repealed," &c. &c.

The Rev. J. Hatchard, who has brought to light the auricular confession practised in the Church of England, at Plymouth, says,—"I speak advisedly when I say, that I come here prepared to offer my opinion, that theologically it is correct that such marriages should take place; and I see no ground whatsoever, on account of which such marriages may not be legalised."

The Rev. F. Close, of Cheltenham, says,—"I believe such marriages as you wish to make lawful, are *already* lawful, according to the letter and spirit of Holy Scripture; and I hope the civil and ecclesiastical law will speedily be made conformable to the Divine."

To quote similar testimonies from Evangelical Ministers, both of the English Church, and from among the English Dissenters, would be endless.

Note D, page 26.

Those who profess to believe that relationships by affinity are the same as those by consanguinity, do not see how far this principle will lead them. For instance, A is a widower, and B is his son. C and D are sisters. A marries C,

and B marries D. B is thus married to his mother's sister.—A minister, whose name is well known as an eminent historian, and his son (now a minister of the Free Church) contracted such marriages.

Again, E is a widower, and F is his son. G is a widow, and H is her daughter. E marries G, and F marries H. F thus is married to his mother's daughter, and H to her father's son.—Many will at once recollect of a father and son, ministers of the Church of Scotland, and afterwards of the Free Church, whose case is here represented.

No one ever supposed there was any moral evil in any of these unions. No man really believes that relationships by affinity are the same as those by consanguinity, whatever he may say when engaged in controversy.

Note E, page 33.

Since the first edition of this pamphlet was published, the author has learned that these marriages are prohibited in four small Swiss cantons, as well as in England. Some people, who have spoken and written against these marriages, have taken for granted that they are also contrary to the law of Scotland. That is only done by those who have never studied the subject.

Henry VIII. having seen Anne Boleyn, wished to get quit of his wife, Catherine of Aragon, that he might be free to marry Anne. Catherine was his brother's widow, and he pleaded the tenderness of his conscience as to the lawfulness of the connection, and sued for a divorce. As is well known, after quarrelling with the Pope on the subject, he did divorce Catherine and married Anne. He also got an Act of Parliament passed, by which a marriage with a sister-in-law might be made void by application to the Arches Court. It was *not* void by law, but only *might be made* void, if any person having interest in the matter would be at the trouble and enormous expense of applying to the ecclesiastical court to get that done. If the court did not dissolve the marriage while the husband and wife were both alive, the children were legitimate in the eye of the law, and succeeded to their patrimonial inheritances. Lord Lyndhurst, seeing that gross injustice might be done to children, if relations wishing to seize on their inheritance should get such a marriage declared null and void, benevolently brought a bill into Parliament to legalize not only all those marriages which had then taken place, but all such as might take place at any future time.—The Bishop of London, however, introduced a clause which, while it legalised all such marriages as were already in existence, rendered all such as should afterwards take place illegal. They were not only to be *voidable*, as they had previously been, but they were to be null and void *ab initio*.

When the bill reached the House of Commons, many in that House were against passing it with the obnoxious clause, and were for sending it back to the Lords to be amended. As the session, however, was drawing to a close, it was thought better, for the sake of those who had already formed these connections, to pass the bill as it stood, rather than to let it lie over to another session, on the understanding that a short bill would in a future session be introduced to rescind the Bishop of London's clause. That is what has not yet been done, though large majorities of the Commons have voted for it.

Now, every one will see that no Act of Henry VIII., nor any Act passed by the Parliament of England, previous to the union of the two kingdoms, is of any force in Scotland. It is expressly provided in Lord Lyndhurst's Act, that

it shall not be construed to extend to Scotland. The Bishop of London's clause has, of course, no force in Scotland. What, then, is the law of that country on the subject?

Lord Rutherford, when Lord Advocate, said, in the House of Commons, that "he had before stated his belief, that if the matter came to be investigated before the courts, it would turn out that the marriage contemplated in this Bill, was in Scotland a lawful marriage; and he had good reason for saying that that was the opinion of an honourable baronet, than whom no person ever stood higher in the Church of Scotland—Sir Henry Moncrieff. For himself, having come to the deliberate opinion that the marriage in question was not forbidden by the law of Leviticus, he came also to the opinion that the connection was not a crime, and that the marriage was effectual for civil purposes."

Edmund Becket Denison, Esq., of Lincoln's Inn, barrister at law, says, "For reasons not relating to the clause in question, it is expressly provided, that nothing in this Act shall be construed to extend to Scotland." Now it turns out, probably to the no small surprise of all the English prohibitionists, both legal and ecclesiastical, that eminent Scotch lawyers, including a late Lord Advocate, now a Judge, declare that there actually is no Scotch law under which marriage with a wife's sister is null and void. There was, indeed, and is, a Scotch statute of 1567, which enacts, that "whosoever shall commit the abominable crime of incest with such persons in degree as God in his Word has expressly forbidden, as is contained in the 18th chapter of Leviticus, shall be punished with death." It is clear that this will not do, inasmuch as this marriage, at any rate, is not expressly forbidden in Leviticus xviii. Then it appears that the only other Scotch statute upon the subject is not a hanging, nor even a disabling one, but, on the contrary, an enabling statute, which declares marriage to be "as free to all estates of men and women as God's law hath made it," having been passed in order to sweep out the rubbish of the Popish prohibitions of marriage with second cousins and god-daughters, and pretty nearly every body whom you did not buy a dispensation to marry.—"If a marriage of this kind is good and valid in Scotland, then it inevitably follows that, however certain we may be that the persons who contrived the prohibiting clause of the Act of 1835 never contemplated any thing of the kind; they have, nevertheless, inadvertently provided, by another clause of the Act itself, a piece of machinery for making any marriage of a wife's sister valid by the purchase of a couple of railway tickets to Dumfries."

Not many years ago, the authorities of Edinburgh, not having read their Bibles attentively, at least not the 18th chapter of Leviticus, apprehended a man who had married his deceased wife's sister, thinking that what he had done was forbidden in the Act of 1567, but he was set at liberty without being tried. Indeed, it is not easy to see how a man could be tried for his life on account of having done that which the public prosecutor declared was no crime.

If these marriages are sinful, why did the archbishops and bishops concur with the other members of the Legislature in giving validity to all such as had taken place before 1835?

EXPOSTULATORY LETTER

TO THE RIGHT REV. R. WISEMAN, D.D.

ETC. ETC. ETC.

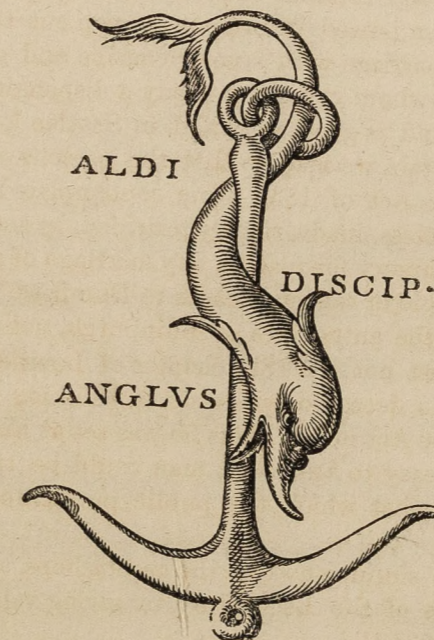
ON THE INTERPOLATED CURSE

IN THE VATICAN SEPTUAGINT

DEUT XXVII. 23.

Ἐπικατάρατος ὁ κοιμώμενος μετὰ τῆς ἀδελφῆς
τῆς γυναικὸς αὐτοῦ.

BY E. W. GRINFIELD, M.A.

AUTHOR OF AN APOLOGY FOR
THE SEPTUAGINT.

LONDON:

WILLIAM PICKERING.

1850.