# Marriage with a deceased wife's sister, a review of the arguments ...

Francis Pott

# MARRIAGE

WITH A

# DECEASED WIFE'S SISTER.

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## A Brief General Review

OF THE

## ARGUMENTS AND PLEAS

*ON THIS SUBJECT.*

TO WHICH ARE ADDED SUPPLEMENTARY NOTES ON SOME POINTS OF INTEREST, NOT ESSENTIAL TO THE DISCUSSION, BUT MORE OR LESS AFFECTING IT.

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BY PHILADELPHUS.

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GENERAL OBSERVATIONS.



# NOTES.

# Marriage with a Deceased Wife's Sister.

THE following pages are an attempt to gather together and set in order the essential points of a discussion that has now been carried on with varying energy for half a century, which have hitherto been scattered over numberless pamphlets, tracts, broadsheets, judgments, charges, speeches, articles, and correspondence, where they are to be found clothed, of course, in far fuller and more effective form, but only at the cost of tedious search amid many inevitable repetitions.

For full forty years a movement has been going on—kept alive at first and for many years by a few wealthy persons only, personally interested directly or indirectly in its success—with the view to obtaining the legalization of marriage with a deceased wife's sister. It has been organized for the greater part of the time under the somewhat delusively wide title of the "Marriage Law Reform Association;" but for many years no names were made public, excepting that of the secretary. It has worked vigorously and indefatigably at great expense both in and out of Parliament by canvassing, petitions, lectures, and other means. A Bill for this purpose has been brought in *twenty-one* times in the course of forty-three years, and in nine different Parliaments. It has of course never yet been passed into law. But the movement is still pressed on.

That the efforts of the Promoters of this Bill to obtain votes in Parliament and signatures to petitions in its favour should have had so much of success as they have [see note (1) at the end] can surely be accounted for only by a widely-spread ignorance or want of thought about its real nature and bearing. But it is an ignorance of which few need be ashamed. The writer of these pages must confess that it is but a few years since he thought as little and knew as little about it as most people. The truth is that we and our fathers have lived so long and so

happily from time immemorial under the old laws which have without dispute regulated marriage, and thereby family life, amongst us, that we have felt no call to inquire what those laws are, what their foundation, what their principles, what their bearing and value. Hence arises a general want of knowledge and thought, which leaves us at the mercy of a few interested persons agitating for change; and this, though it is no cause for shame to most men, is of danger to all. And when once the question is brought before us, as it has now been, it does become a shame if we do not our best to comprehend it. Hence the following attempt to make it generally intelligible.

It is not, like most other legislative proposals, a matter merely of expediency or of justice between man and man. It touches seriously the Divine Moral Law, and is a question of conscience on the part of those who oppose the change.

This, however, though the strongest, is by no means their only ground for opposing it. They are Englishmen as well as Christians; they are husbands and wives, fathers and mothers, brothers and sisters, and have many other grave reasons for striving in every way to save their country from this mischievous measure.

Of these the most readily and generally appreciable are briefly but seriously urged upon the reader's attention in the following pages.

They are especially pressed upon the attention of Members of our two Houses of Parliament, to whom is entrusted by Providence, not only the material comfort and social happiness of their countrymen, but the maintenance of Divine law and morality among us for all generations. The one step which the Promoters * would persuade Parliament to take would not only be irrevocable itself, but fatal to the integrity and future security of the whole marriage law; the Promoters themselves say truly that "there is enough of doubt and difficulty in the subject to make men cautious." If, then, caution is demanded of those who are fighting to maintain the old law, how much more is it due from those who are bent upon removing ancient landmarks,

* Throughout these pages the term "Promoters" is used for those who are agitating for change, because it has the advantage of conciseness without any tinge of assumption or offence.

breaking up a great principle, running counter to the experience and conscience of eighteen centuries of Christianity, and forcing a breach, confessedly irreparable, in the chief bulwark of society! And this, as I hope to show, is no exaggerated description of the change with which we have been threatened.

For convenience and perspicuity I shall arrange what follows under the two heads of Arguments and Pleas. By arguments I mean reasoning which rests on facts past and present. By a plea I understand such as is drawn from the certain or probable consequences of change in the future. I shall be as brief as possible in the statement of these reasonings, combating as we proceed only such counter pleas as have been or might be urged directly against them, leaving smaller points, which have been raised by the Promoters by way of throwing doubt on our Scriptural and other argument, to be dealt with more fully in supplementary notes at the end, together with some other points of interest not essential to the main question. In this way I shall leave no argument of theirs unanswered, while I avoid unnecessary interruption in stating ours.

We are spared the labour and uncertainty of searching through a multitude of pamphlets and speeches for theirs, by the issue on their part, so lately as the year before last, of a "Summary of the Chief Arguments for and against," &c., which we may safely accept as containing all arguments of importance on *their* side; though seeing that they admit that their statement of the arguments against them "is compiled mainly" from two pamphlets only, published many years ago by Dr. Pusey and Mr. Keble, and upon the evidence of the former before the Marriage Commissioners eighteen years ago, it will hardly be expected that we should recognize it as adequately representing *our present* position.

## I.

*Arguments.*—These will divide themselves into those which rest (1) on revealed DIVINE LAW; (2) on the testimony of HISTORY to our interpretation of the Divine Law; (3) on the PRINCIPLES of this Law and its perfect consistency therewith; (4) on the MORAL CHARACTER or motive thereof.

But, before stating these, it is of great importance to state clearly what our English Law which we are defending is, and what its history; for great advantage has been taken of certain technical peculiarities in its former administration, and of one very questionable incident in its modern Parliamentary history, to mystify the unlearned and weaken their respect for it.

## II.

*The present English Law* on the subject has been from time immemorial a part of that recognized but unwritten law of the land known as the *Common Law*. It may be found most conveniently in a "Table of Kindred and Affinity, wherein whosoever are related are forbidden in Scripture and our Laws to marry together," printed by custom at the end of most copies of the Church Prayer Book. This, though it is referred to in the "Canons Ecclesiastical" of 1604, is not a statutory document or enactment, but merely a summary statement of what had been always the law, drawn up by Archbishop Parker, in 1563, as a guide to the clergy and people. This ancient law was recognized in a statute of Henry VIII., 1533, and was the ground of all judicial decisions before and since. Long afterwards, in 1835, a *Statute Law* (of which the history and intention is explained in the supplementary notes) was passed, which enacted that "all marriages which should thereafter be celebrated between persons within the prohibited degrees"—prohibited, that is, by the then existing law, represented in the Table of Degrees—"should be absolutely"—that is, without the formal presentation before a judge which had hitherto been required —"absolutely null and void to all intents and purposes whatsoever."

The deceased wife's sister is, without question, and as a matter of course, one of the prohibited degrees under both the old common law and the more recent statute. But the Promoters, by keeping attention fixed on the latter only, mislead people into the belief that this marriage was first prohibited in 1835 (see Mr. Clarke's recent speech in Parliament).

The simple and conclusive answer to this fallacy is to be found in the fact that if a man's wife's sister was in any degree law-

fully marriageable to him before that date, we are driven to the absurd conclusion that he might have married his own sister, mother, or daughter; for there is certainly no trace of any distinction whatever in the eye of the law previously between consanguinity and affinity; and the only distinction ever made was made for the first time, and for one transient purpose only, in the Act of that date, which Act itself, in a subsequent clause, expressly obliterates it. Nor will this temporary and partial distinction serve their purpose, for even this recognizes no difference between a wife's sister and her mother, or daughter, or a man's daughter-in-law, &c.

Questionable in principle and inconsistent as that Act was, and mischievous by its example of tampering with public law for private ends, it was providentially saved from worse things. Its own author asserted that it rendered no marriage valid that was not valid before, nor any marriage invalid that was valid before. It merely saved the children of certain existing, but essentially and confessedly unlawful marriages, which had been, it was asserted, contracted under misapprehension, from the civil disabilities to which they had been born, and then by its next clause removed all possibility of misapprehension and excuse for the future. [See note (2) on Lord Lyndhurst's Act.]

"But," say the Promoters, "these marriages were not void before 1835, but only voidable; and therefore the assumption is that they were then only contingently unlawful, *i.e.* only if they were declared void by a court of law." This idea rests upon a misunderstanding of technical terms into which we need not enter; it is enough to quote the simple *dictum* of Lord Brougham in giving judgment in "Fenton *v.* Livingstone": "they were voidable because they were void." It is obvious that no declaration of a court could make a valid marriage invalid. (The technical and general details of the law are most lucidly explained in Mr. T. Dodd's Paper, No. XIX. of the Marriage Law Defence Union.)

Lastly, advantage is taken of the allusion made in one of the English Church Canons of 1604 to the prohibited degrees (and of the totally distinct fact that the marriage laws, together with many others, formed part of that great body of European law, called Canon Law, which exercised more or less influence on all legislation and judicial rulings wherever Christianity prevailed in

the West) to prejudice persons, who may be jealous of Church influence, against this particular prohibition by describing it as a mere ecclesiastical law imposed by the Church of England on the whole nation. But the Canons of 1604 imposed no prohibitions; they only endorsed and made clear those that had always prevailed; and the Canon law had no force here, except so far as it was adopted by the civil courts.

These prohibitions were without question part of the national civil law from time immemorial.

The importance of a knowledge of this fact in the present controversy, and, *vice versâ*, the value of its suppression to the Promoters, is shown by this, that almost all the latter half of their "Summary" is occupied with arguments based upon the suggestion that we rest our case for the enforcement of the present prohibitions, not on the civil law, nor indeed even on the old Canon law, but on the local English Canons of 1604. The whole of this moiety of their "Summary" is really *nihil ad rem*, beating the air, and I am relieved from any necessity to notice it further.

The real value of these Canons, and, indeed, of all human law in relation to this question, is misunderstood, and will be explained in the proper place.

To sum up, then, the present state of the law: unions within any of the degrees named in the Table of 1563 have been from the very first, without break or exception, and are still, by *all* law—Canon Law, Common Law, Civil and Ecclesiastical Law—in themselves, and apart from mere civil consequences, *no marriages at all*, all alike null and void *ab initio*—voidable in an ecclesiastical court up to 1835, and since that date "absolutely—*ipso facto*," *i.e.* without reference to a court, "null and void to all intents and purposes whatever."

That is the law of the land. On what grounds does it stand? On what authority do we maintain that it is irreversible and of permanent obligation?

*Primâ facie*, as the law of our country for generations it claims our reverent regard, and demands very grave and decisive reasons for its repudiation; but, as I now proceed to show, it stands upon much firmer ground than conservative sentiment.

## III.

*Argument from Divine Revealed Law.* — "If," said Lord Bramwell, one of the leading Promoters, "if there be a Divine prohibition of these marriages, then there is an end of the matter, and we need not consider what might happen afterwards. We ought to say at once, 'No, it shall not be done!'"

We accept the challenge with confidence. The law as it is given us in Leviticus will be found in an Analysis of it at the end of the supplementary notes.

The Divine law is concisely stated in the words, "None of you shall approach to any that is near of kin to him," or, literally, "flesh of his flesh" (Lev. xviii. 6). What is its meaning, its principle, and its application?

The *meaning* of the expression "flesh of his flesh" must be "near of kin, not only by birth, or consanguinity, but also by marriage or affinity," and so must include the wife's sister. For this conclusion there are three reasons:—First, *à priori*, from comparison with the use of the same terms in the first institution of marriage before the question of birth arose. In Gen. ii. 23–24 Adam says of Eve, with an express further reference to future wives, "This is now . . . flesh of my flesh;" and it is impossible to suppose that the same terms in the same relation in Leviticus can have any but the same meaning. Secondly, because as a matter of fact no distinction is recognized anywhere in Holy Scripture between consanguinity and affinity; both are spoken of under the same term, "flesh," and neither of them by our term "blood." There *is* a difference of course, physiologically, but not a difference *ad rem*, and therefore not recognized as touching this question, nor any question raised in the Bible. Thirdly, and conclusively for our purpose, the examples which immediately follow the general enactment of verse 6 contain promiscuously relations of both sorts and actually more of those by affinity than of those by birth. [See note (3) on "One Flesh."]

2. We turn next to the Divine *application* of this general law prohibiting marriage with near of kin. This, as is always the case in the Old Testament, is laid down in a practical rather than in an abstract, or exact, or exhaustive form, *i.e.* in a number of examples (compare the Decalogue itself). The exam-

ples given are only examples, and not a complete catalogue of all unlawful unions; and this is shown by the absence, among others, of the mother-in-law (cf. Deut. xxvii. 23), the niece (a blood relation), and even the daughter; but these examples being given, the "law of proof by analogy and converse" comes in and fills up the list.

It is not, for instance, said expressly that a man may not marry his daughter. We infer certainly that it *is* unlawful thus: It is said expressly that a man may not marry his mother, conversely we infer that a mother may not marry her son; and then by analogy that a father may not marry his daughter. It is not said expressly that a man may not marry his niece, but it *is* expressly said that a man may not marry his aunt—conversely, a woman may not marry her nephew, and, analogously, a man may not marry his niece. So again it is stated expressly—and this is the important example for our purpose—"that a man may not marry his brother's wife—conversely, a woman may not marry her husband's brother, and, analogously, *a man may not marry his wife's sister*. Unless we allow these methods of inference in all the cases thus cited, and in others which might likewise be cited, we ought, if we are consistent, to allow them in none, and a man might then marry his mother-in-law, or his daughter, or niece. On the other hand, if we allow them in one case we ought, if consistent, to allow them in all—and thus A MAN IS FORBIDDEN TO MARRY HIS DECEASED WIFE'S SISTER. Why this should have been left to our reasoning, and a full list not provided, it is not for us to say, nor would our inability to account for it the least weaken the argument. But the writer offers in a supplementary note what seems to him a not unlikely explanation. [See note (4) on "Implicit and Explicit Prohibition," and the Analysis at the end of the Notes.]

The result of carrying out the above method of inference is the formation of that Table of Degrees of Kindred and Affinity of which we have spoken already, as representing our present law, and prohibiting among the rest the deceased wife's sister.

8. What, then, have the Promoters to say on the text of the Levitical Law?

Their one and only direct argument on the Scriptural question is derived from the 18th verse of this same chapter (see Analysis at the end). This verse they have the assurance to

describe (" Summary," page 5) as " a clear permission to marry her sister after the wife's death ; the prohibition being in direct and unambiguous terms (!) limited to the wife's life." So far is this from being true that their own most recent and acknowledged spokesman, in a speech in Parliament (Mr. E. Clarke, M.P.), supposed this verse to be actually *our* chief argument against him ! It is, indeed, not ours at all ; so far from our depending in any way upon it, we are quite free to allow, that if this verse were not there at all, our position would be as absolutely unassailable as it is now really impregnable. The verse, such as it is, is theirs and their only one. But how then, after so blundering over it themselves, can they possibly call it clear and unambiguous ? It is notoriously the contrary. For there are *two* well-known and long-known different *translations* of the Hebrew, both shown in our authorized version ; which fact alone is fatal to their contention. And over and above this there are at least *four* well-supported *interpretations* of the words so translated.

And it is with a weapon so uncertain in its thrust as this that they think to overthrow a great principle and a law of universal importance.

It would interrupt our argument inconveniently to the reader to examine and expose all the weaknesses of this text for their purpose, and I will only here notice the chief points, leaving the rest to a note.

The verse is claimed as permitting, but, observe, by inference only, the marriage of the wife's sister after the wife's death, because it says, according to our English authorized text, " Neither shalt thou take a wife to her sister, to vex her, *retegere nuditatem ejus*, beside the other in her life time."

Let us remember that in the margin an alternative translation is given, and that according to the terms of the commission of King James to the translators, or revisers of the former translation, these marginal renderings are those which they thought the best, but were forbidden to substitute for those in the old text unless they were satisfied that these latter were certainly wrong. The marginal rendering here is, instead of " Thou shalt not take a wife to her sister," " Thou shalt not take one wife to another ; " the Hebrew phrase being one that is *always* used idiomatically elsewhere in this sense ; the word " sister " being constantly used also apart from the idiom to signify " another

woman or another thing like the first," and the Hebrews having, like the Greeks, one word only for "woman" and for "wife." This preferred translation makes the verse just what one would expect it to be from its position in the chapter, a prohibition of polygamy. After the general law of marriages, unlawful from nearness of kin (verse 6), and after the examples illustrating it are completed, as we saw, in the seventeenth verse, a second general law forbidding polygamy comes in naturally;—"And a woman to her sister," *i.e.* one woman to another, "thou shalt not take." This translation was no new invention of King James' divines; it was known many generations earlier, and is maintained by many of the first Hebrew scholars; and deprives the verse of all value for the Promoters' purpose. But let it not be forgotten that we are in no way bound to prove this to be the true one, nor to produce *any* exclusively true translation; whereas the Promoters *are* so bound, for with a clear principle and general law against them, no merely possible or plausible interpretation will enable them to maintain a presumably unlikely invasion of its integrity. On the other hand, any possible interpretation of this verse which is consistent with that law must be more probable than one that violates it. Now, including theirs, there are at least four different *interpretations;* and whether it be that which makes it forbid polygamy, or that which makes it refer to the two women in the previous verse, or that which makes it infer the allowance of polygamy and yet especially forbid two sisters as co-wives at any time whatever "all her days," or whether it be one of other suggested interpretations, it matters nothing to us; but to them the possibility of any of these, and the consequent ambiguity of the verse, is fatal.

I will only add, as showing the great antecedent probability of the verse being a prohibition of polygamy, and having nothing therefore to do with the wife's sister, that there would otherwise be no such prohibition in Scripture, and yet no expressed permission of it; while it is certainly a violation of the original principle of marriage.

The position of the verse in relation to the rest of the chapter and the form and phraseology of it in several respects are also against the interpretation advocated by the Promoters, but these points must be relegated to the notes. [See note (5) on Lev. xviii. 18.]

5. Such is the conclusive argument from the Divine law revealed to us in this eighteenth chapter. But it is further supported by the twentieth chapter, where certain special punishments are assigned to several of these incestuous unions; and where—observe its weighty bearing upon our subject—the extreme punishment of death, even by fire in one case, is named for cases of *affinity* only, and in terms of emphatic denunciation as of gross moral iniquity.

6. And, lastly, even more direct evidence is found in the twenty-seventh chapter of Deuteronomy, where, among the solemn curses of Mount Ebal, three are pronounced upon incestuous unions, and of these three two are cases of affinity, and the term used in the last is one which seems to include *all* the wife's near of kin. But of this more presently.

The *principle*, the *self-consistency*, and the *reasonableness* of this law thus laid down, and its motives, shall also be considered presently. So far we have vindicated the fact of its prohibiting marriage with the wife's sister.

7. If there should still linger in the reader's mind a doubt —arising from the ambiguity of the eighteenth verse—whether it may not contemplate, though it does not assert, an exception to the general principle of the law, and even to the principle of the express prohibition of two brothers to one woman in verse 16, imaginable at a period when the sexes were not treated on equal terms—let him remember that it is the glory of the Christian religion, and of our later civilization too, that such inequality has disappeared from our conceptions of right, and that of course this imagined exception must follow it. But a little closer consideration would show that the inequality of the sexes does not really touch the question. [See note (7) on "Inequality of Sexes."]

8. Failing in their direct attack by means of this verse, and yet anxious to detract from the moral force of this prohibition, and so of other like prohibitions, the Promoters contend that there can be at least no *impurity* in any such connection, because marriage with a brother's wife is under some circumstances sanctioned by the recognition of the Levirate custom, as it is called, in Deut. xxv., and by God's *command*, that in such cases a brother should take his brother's widow; for that God could not command an act of immorality.

Let us for the moment grant their interpretation of this passage; yet it would still be sufficient to reply that the binding force of God's law and its prohibitions in Lev. xviii. does not *depend* on any inherent impurity (whether this exist or not) in the act forbidden, but on God's will; although it is agreed that such impurity does exist in many acts, and an instinctive or acquired sense of it is mercifully granted to almost all men in some degree.

The force of a revealed prohibition depends solely on the revealed will of the Lawgiver; all disobedience to this is *ipso facto* immoral. And if the same act were really in one place forbidden generally or under one set of circumstances, and in another under another set of circumstances or conditions commanded (which I do not admit to be the case here), then, whether it seem to us pure or impure, to commit it in the one case and to omit it in the other would be equally immoral. [See note (8) on "Inherent Immorality."]

9. Let us, however, still grant, for argument's sake, their interpretation of the passage; granting also that God can abrogate His own law, either wholly or in part; yet it needs very incontestable proof that He *has* done so, and has done so without a word about the law abrogated or the fact of abrogation, before we can overcome the strong presumption that He would not do so. And again, if the supposed or real abrogation was for a purpose now no longer desired, and if it is distinctly limited to a certain marriage and to a certain set of circumstances, as is the case here, it is undeniably a violent use of it to extend the abrogation both to circunstances and to persons not named nor contemplated. But to the Promoters this passage is worthless without this violent and indefensible extension; for it says nothing of a wife's sister at all, and nothing of any second marriage except where the former had been childless. Therefore the original prohibition in Leviticus (verse 16) stands for us unrepealed by Deut. xxv., even if we grant their interpretation of the latter passage; for its motive and conditions have of course no existence now. But we cannot grant it.

10. There is really no such command—no such exception to the general law here. For in order that it should outweigh the moral force, and, as the Promoters would have it, repeal *pro tanto* the express letter of the prohibition of a brother's wife in

Leviticus, and so also through this the inferred prohibition of a wife's sister, this so-called command must be itself express and beyond doubt, or it can otherwise only shatter itself against a law of unquestionable meaning, an integral part of a larger law, based on a clear principle with which it is consistent throughout. But the passage of Deut. xxv. on this custom of the Levirate, and the history of the custom itself (the closer examination of which we must leave to a supplementary note) can claim no such weight. It must suffice here to say that the English translation of it is altogether misleading; and that the critical word in the passage on which the Promoters rely, which is translated in our English Bible "husband's brother," has no such meaning in the Hebrew. [See note (9) on the Levirate custom.]

11. A further attempt, and a bolder, to lessen the moral force of the prohibition is made ["Summary," page 1] by suggesting that even the closest *blood* relationship involves no impurity; for, say they, "faithful Abraham" cannot be supposed guilty of impurity, and he married his sister or half-sister. But here again it is only through a misunderstanding or straining of the Hebrew terms of relationship that they are led to assume that Sarai was really or certainly anything nearer to him than a cousin. [See note (10) on "Abram and Sarai."]

11. But is it really necessary to argue thus for the essential impurity of unions which in the very law prohibiting them are described by God Himself in each case by a term which obviously indicates, and is never used except as indicating, moral reproach, and are further denounced in the same chapter as "defilements" and "abominations"?

Or, again, is it probable that the Holy Spirit should have inspired John the Baptist to denounce, at the risk of his life, as unlawful, an act of no real immorality? Or Saint Paul to speak of another like act in the strong terms of indignation and shame which he uses to the Corinthians (1 Cor. v. i.), if it were nothing but a social wrong?

The case of Herod, indeed, it is often sought to put aside on the ground that his brother Philip was still alive; but this suggestion I have dealt with fully in a note. [See note (11) on "Herod and Herodias."]

12. If we would ascertain whether this law is morally binding

upon us, it must be not by any reference to our vague sense of morality, but by what we learn of the responsibility in respect of it attaching, in God's judgment, to mankind generally.

This responsibility, however, the Promoters seek to escape by suggesting that it was a special law for the Jews, and therefore is not to be accepted as binding on others. But the very opening of the chapter, and its conclusion also, put this out of the question. If any people might plead exemption from a Jewish law it would be, not Christians, but the heathen of Canaan and Egypt; yet these incestuous unions are laid as sins at the door of these Gentile nations; and the Canaanites are declared to have been "spued out" by their land because they had "defiled it" with "these abominations." There can be no doubt that it is a part of the moral law of general and permanent obligation.

13. Another yet bolder form of this argument is to claim that these strict laws of old are no longer binding under the freedom of the Gospel! This is a strange perversion of words. The freedom wherewith Christ has set us free is freedom from the power of sin, not from obedience to the law, nor from the strictness of the law, so far as it is general and moral.

No one can read the Sermon on the Mount, and especially the utterances of our Lord on this very subject of marriage, and doubt that the Gospel is deeper, closer, and stricter than the Law in the lines which it draws.*

14. It is only because I would not pass over any argument of the Promoters that I am obliged to notice so desperate a one as that by which they seek to exclude the deceased wife's sister from the prohibitions of Lev. xviii. by a reference to the twenty-first chapter as "plainly showing *whom* God includes in *near of kin*" in the former chapter. It will hardly be believed that the list there given is of those near of kin for whom, according to the *ceremonial* law, a priest was allowed to mourn publicly or ritually! The absurd inconsistencies into which this drives them have been well exposed by Mr. Dodd [Tract xxxix. M. L. D. Union]; but

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* It has been noticed that our Lord went out of His way—His otherwise undeviating way, of laying down broad principles illustrated only by examples—to give also a defined and particular law in the one case of marriage alone, so important is this great institution in His eye, and so prone does He know men to be to strain its principles to admit their own indulgences.

it is surely enough to point out that with a list of relationships already provided in the body of the marriage law itself, it is something worse than inconsistent to repudiate it for a list drawn for a totally foreign and narrower purpose, and nothing less than untruth to assert that "all beyond" the prohibitions of this latter "is human suggestion," when within three chapters of it Holy Scripture itself goes beyond it.

15. So important do the Promoters rightly feel the Scriptural argument to be, that they have spared no pains and no expense to marshal against it all the opinions of any apparent weight obtainable; and great has been their success in deceiving themselves and attaching the unwary to their views by the wide gratuitous circulation of a pamphlet containing opinions from nearly all the Hebrew and Greek professors in Europe, which, for by far the most part, though not unanimously, seem favourable to them, and are naturally taken at first sight as conclusive.

But a brief consideration and a little examination shows how little reliance can be placed upon them. First, Scholars in the Hebrew or Greek language, as such, are not necessarily trustworthy judges in this case. It is not a question of word-craft, grammar, or etymology, but of intimate knowledge of the Bible. The late Professor of Hebrew at Oxford was, for instance, *nemine contradicente*, both a profound Hebraist and a theologian; but he, amongst others, taking a wider view in consequence, answered unfavourably to the Promoters.

Secondly, the opinions given are answers to two questions alone, so framed, perhaps from inability to grasp the real point, as to narrow the issue yet further. They ask of the Hebrew professors, "Whether such marriages are or are not prohibited in the Mosaic writings;" and of the Greek professors a still smaller point, "Whether it can be reasonably inferred from the original text of Eph. v. 31 that all the relations of the wife become by her marriage, and so remain after her death, one flesh with the husband." We must not fail to notice—first, that these two narrow queries which properly are parts of a connected whole, are here kept asunder and submitted to different parties, each of which was confined to its own; and, secondly, the narrow scope of the questions themselves, especially of the latter. But the answers show that the professors narrowed the issue yet again, for the majority of the Hebraists confine themselves

to the one verse, Lev. xviii. 18, which is fatal to the value of their replies, and those few who looked beyond differ widely in their interpretation of this "unambiguous" passage. While the Greek professors have all of them limited their judgment, as they were asked to do, to the one verse of Saint Paul's Epistle, the bearing of which on the matter is only indirect.

Lastly, some of the professors, whose opinions are not the least valuable, indicate that if the question had been, "What ought the Christian law to be?" their opinions would have been different.

The real bearing of these opinions and the surprising inaccuracies of some of the reasonings have been ably exposed by Dr. Candlish in his paper (No. xxv. of those published by the Marriage Law Defence Union), which should be read by any who have hitherto been swayed by the professorial replies; nor should it be forgotten that they are opposed to the continuous and unanimous judgment of all Christian teachers up to recent times, who, whatever their literary acquirements may or may not have been, were masters of the Scriptures, letter and spirit, such as are very rare in these days.

## IV.

*The Witness of History.*—It is very important that I should make quite clear to the reader that I do not put forward the facts of History as an *authority* in such sense that I claim *obedience* to the rulings of the wise of old, or the learned, or even the holy; though he must be a reckless legislator who makes light of the results of eighteen centuries of Christian experience.

Still less do I here demand any submission to ecclesiastical authority, because I adduce the witness of Church history, councils, censures, or dispensations; though I should be far indeed as a legislator from feeling myself at liberty to wound permanently the conscientious scruples and render miserable the social position of the thousands who recognize this authority as that of the mouthpiece of the Holy Spirit in order to gratify the affections of a few who do not.

We appeal to history, sacred or secular, only as to a constant and widely-extended *witness* of the general moral sense of Christian men in regard to this question, and of their common

consent to our interpretation (whatever might be the current *translation* of a certain verse) of the Divine Law and its universal obligation, and, we may add, of their happy experience under its restrictions.

1. The testimony of Jewish history proper—*i.e*, from the beginning of the old dispensation under Moses to its abrogation at the fall of Jerusalem—is to be found solely in the canonical and apocryphal Scriptures of the Old Testament; and these present no *facts* bearing upon our question; but this very absence of any instances of such an union in all that fifteen hundred years is of itself remarkable.

2. *Anterior* to the promulgation of the marriage law, or rather its re-enforcement by Moses, one case is known, but a case so exceptional that, even if it were indirectly sanctioned or condoned by God, which is certainly neither capable of proof nor to be gathered from its consequences—and even if it had happened after the giving of the law, and not 250 years before—it could never have been of any weight as a proof of its moral or legal rectitude; for it was virtually forced upon Jacob by the fraud of Laban, and this in a family where the pure faith and obedience of Abraham had never prevailed, but the idolatry and probable laxity of morals from which the patriarch had been called to sever himself.

3. The translation of the Old Testament into Greek by the Seventy at Alexandria (B.C. 250) must be included among the facts of Jewish history. Does it testify to the opinion or practice of the Jews of that period in respect of this question? There are two passages on which it might throw light, viz. the disputed verse in Leviticus, and the curses in Deuteronomy. But the first it leaves exactly as it found it, translating it verbatim, and not even indirectly interpreting it, the Greek words representing "woman" and "sister" being capable, according to common usage, of just the same meaning, primary or metaphorical, as the two Hebrew words; and, the Greek language having no parallel idiomatic expression, the translators could do no otherwise, whatever meaning they may have assigned to this passage. In the second instance (Deut. xxvii. 23) the oldest known copy of the Septuagint is very favourable indeed to our belief that the Jews of that date held the wife's sister to be prohibited; for it makes the curse to fall upon a man

who takes the "sister of his wife," where the copies which were followed by the English Bible have "mother-in-law." This, even if inaccurate and spurious, at least shows the opinion of those responsible for this MS., if not of the Seventy, to have been that the wife's sister was meant by the Hebrew word. The account of this independent testimony of the Greek version to the later Jewish or Hellenic interpretation is explained in a note. [See note (6) on Deut. xxvii. 23.]

4. We must include also in Jewish history those records of Jewish rules and traditional opinions which are contained in their Rabbinical Commentaries, although they belong to Christian times, dating from some hundred years after the destruction of their nationality, and written by Jews of the Dispersion. The Mishna cannot be claimed as conclusive on either side; for while it has passages distinctly assuming the illegality of marrying a deceased wife's sister, it has others which seem to lean the other way. [See note (12) on "The Mishna."]

But Maimonides, the learned Spanish Rabbi of the twelfth century, whose book is a summary of Jewish law, held in very high esteem as an authority among Jews, says expressly (I quote from a note of Lord Hatherley's) that the marriage of a man with his wife's sister and that of a woman with her husband's brother are parallel or analogous cases and forbidden on the same ground, viz. that of nearness of relationship.

5. It is indeed urged as a very strong argument by the Promoters that the modern Jews allow and even encourage this union. But the force of their opinion and practice must be measured by what we know of their antecedents and their circumstances, and their mental attitude; and these are such as to render their evidence very weak indeed. The Jews of our Lord's days on earth were so far from trustworthy in their interpretation of Scripture that He frequently charges them with error "not knowing the Scripture," and "making it void by their tradition." And it is remarkable that the most express denunciation of their ignorance was in immediate reference to a question concerning marriage, though having a wider reference as well.

But their practice was even worse than their opinions; they made the whole law of marriage by facilities for divorce so horribly lax that they lost all sense of its sanctity and obligations,

and are described as "an adulterous generation" by our Lord. [See note (13) on "Jewish Morals."]

But even so—or perhaps because of this laxity—their witness agrees not together; on marriage law in general the two schools of Hillel and Shammai were in constant dispute, the former taking a very easy view, the latter a somewhat more restricted one; and we have seen the inconsistencies which disfigure the Mishna. The same uncertainty prevails in Philo-Judæus and other Alexandrian writers of the Jewish race. [See Mr. Galloway's pamphlet, page 10.]

6. But there is a school among the Jews known as the Karaites or Scripturists, who appear first as a distinct sect in the eighth century, but who had, we cannot doubt, predecessors many and devout long before that, and who, repudiating all glosses and tradition—whether wisely or unwisely it is not now to the point to decide—sought guidance solely in the words of the canonical Scriptures of the old dispensation. They are a small but still existing body, with representatives in many places; and they maintain that the wife's sister is forbidden by Holy Scripture.

It must be observed, however, that the value of the testimony of these Karaite Jews, as compared with that of the more or less "orthodox" Jew, is not to be measured by their numbers, but by the superiority of direct over indirect testimony to the meaning of Holy Scripture; for that, let it be remembered, is the single point now before us.

The practice and opinion of ordinary Jews on this question of the deceased wife's sister *may* be traceable to their original interpretation of Leviticus, but it *may* be nothing more than the tradition of later and laxer times, or it *may* be the outcome of the many still later and conflicting comments and speculations of their Rabbinical writers; whereas the Karaites went back directly to the words of Scripture alone, and in doing so found themselves without hesitation or exception, and, as we shall see, contrary to the bias of their own circumstances, interpreting the Levitical law, as we do, to prohibit this union.

I say "contrary to the inducement which the special circumstances of the Dispersion offer to relax this law," for this consideration, while it strengthens the witness of the Karaites, very largely detracts from that of the rest of the nation in favour of laxity in this particular. I refer both to their national exclu-

siveness and to their enforced isolation from their Gentile or Christian neighbours, which must often have rendered the maintenance of restrictions on marriage amongst themselves and within their limited communities a matter of great difficulty, and a constant temptation to their rulers to discover loopholes of escape.

7. From Jewish we should naturally pass to Christian history; but it will be more convenient to anticipate and also to digress a little, and call a witness from outside. The self-constituted Prophet of Islam may not be at once recognized as a witness of much weight; but the fact that he acknowledged Moses as a predecessor, and professedly adopted the Mosaic law where it did not interfere with his own views, while at the same time owning no allegiance to its authority, makes him at once a direct and an independent witness to the *received interpretation* of that code, so far as it is incorporated in the Koran; and it is to the interpretation of the law given by Moses that we are seeking testimonies. It is, then, no little support to our position that the Koran is unhesitating in including the prohibition of the deceased wife's sister without any limitation to the lifetime of the first wife, which, if it had been understood to attach to it, would not have been thus ignored by a prophet of a polygamous people.

8. The law and practice of *Pagan* nations, however civilized, can of course form no part of the witness of history to any interpretation of the written law of God; yet I suppose the reader will admit that as a witness to human experience and natural feeling, though at a low level, it may not be without its worth; and that even if it gives an uncertain sound as to the *degrees* of relationship forbidden, yet nevertheless its prohibitions, as well of affinity as of consanguinity, so far as they go, and with the Romans they went very far, do at least overthrow the contention of the Promoters that there is no inherent impurity in these unions of which our natural instincts, apart from revelation, can take cognizance; while at the same time the moral corruption and laxity which prevailed quite accounts for a widely varying and uncertain application of the general principle which they recognized, and shows how worthless even a true instinct is as a measure of its applicability.

## V.

*The Witness of History in Christendom.*—Here we expect to find the most trustworthy testimony to the true interpretation of a law which Christians held to be inspired; for we are still, observe, seeking not for indications of Christian feeling, opinion, or teaching as to what at any time might be morally right or wrong in itself, expedient, or the reverse, nor for Church rulings which we are to obey, but simply for the testimony which the law and practice of the Church universal and the writings of her leading men, together with the civil law and custom of Christian States, afford to the received interpretation of the law of the Bible. And it is never to be forgotten that the recognized function of all the old ecclesiastical councils was not to legislate but to bring together, rectify, and register the independent but concurrent evidence of scattered Churches concerning the rules and doctrines already delivered long before to each. The conclusion of their deliberations was not like that of the *Apostolic* Council of Jerusalem, "It seemed good unto us," &c., but rather like that of St. Paul on one occasion, "We have no such custom, neither the Churches of God." Nevertheless the promised guidance of the Holy Spirit makes this evidence something more than ordinary evidence.

It is most important to grasp the above facts; for the Promoters constantly assert, as if it were a very telling point in their favour, that there is no written law of the Christian Church to be found prohibiting this particular union with a wife's sister for the first three centuries. Of course there is not, nor any written law of those times against marrying one's own sister, mother, mother-in-law, and all the rest of a man's relatives. There was no need of it; the whole marriage law of the first covenant, so far as it was applicable, including these prohibitions, was already part of the Church's heritage and of her common law. It was not until cases arose in which "the wish was father" to the doubt that they found any necessity for declaring the law; and then the question was met simply by appeal to the long-accepted interpretation of God's law.

1. The most important, though not the first, nor the most direct, witness will be one found in the mid-stream of history at

the centre of government and civilization, in the decree of the Emperor Constantine, A.D. 355, and therefore very soon after the recognition of Christianity as the religion of the empire. It brings the Roman marriage law up to the level, in respect of restrictions, of the law ever since in force, by forbidding certain unions, of which the wife's sister is one, not theretofore forbidden by Roman law. And how is it possible to account for this at that time, except as an acknowledgment of an already existing Christian belief and rule?—not, certainly, by any spontaneous effort of Roman society in its then demoralized and sinking condition.

2. Turning now, first to the Eastern world, our fullest testimony is that of Basil the Great, Bishop of Cæsarea, A.D. 370, and is just in this form of appeal to unbroken custom. "The first argument," he writes, "and the strongest in all such questions is that of our custom, a custom which has the force of law, inasmuch as our rules have been transmitted down to us by holy men; and our custom is that if any man fall into an unlawful union with two sisters, neither is such union to be accounted marriage, nor are either of the parties to be reconciled to the unity of the Church, unless they have first parted the one from the other. So that even if we had no other argument to bring, our custom of itself would suffice as a defence against any such mischief." And then, *ex abundanti*, he proceeds to show that this accepted belief was not founded on instinct or ecclesiastical rulings, but on Holy Scripture, and defends it on the strength of the passage in Leviticus.

Observe that it is not for a moment imagined here, as the Promoters would have us imagine, that the novelty was the prohibition of this union at the beginning of the fourth century, but exactly the reverse. The novelty—the impudent novelty, as St. Basil deems it—was the proposal to allow it, and to defend it by a new interpretation of the verse in Leviticus, the very interpretation now adopted by the Promoters. This testimony is of the more value that St. Basil was no recluse or bookworm, though highly educated, but one whose knowledge of the rules and customs of Christians was attained by personal residence in cities so widely scattered as Athens, Constantinople, and Antioch, and in his own large Province; in the Imperial Court as well as in the rural communities of Asia Minor. It is nothing

to the point to make out [" Summary," page 8] that St. Basil held transcendental opinions on the comparative sanctity of celibacy and marriage in general (which opinions, indeed, they ridiculously misrepresent), for it is not his opinion but his witness that we claim.

Nor, in the face of Basil's letter to Diodorus, is it open to them to claim the latter as " another Bishop who thought these marriages unobjectionable." [See the letter more at length in Tract XI. M.L.D. Union.]

3. The Apostolic Canons stand next; whether they represent a period earlier or later than St. Basil is uncertain; but whatever their exact date, and whatever their weight as an authoritative code, nothing can deprive them of their value as witnesses to the received opinion of the sin of a marriage which, even if repented of and forsaken, they ruled to be a lifelong bar to ordination.

[To the fourth century belongs also the witness of the earliest existing copy of the Septuagint; and although we have already referrred to this as a Jewish witness, the Promoters compel us to recall it here; for they insist that this particular copy (*Codex Vaticanus*) is of Christian origin. Well, let it be so. What then? The witness is only shifted from Jew to Christian. It is still ours, for, even if it be a gloss, or even an interpolation, of the fourth century, it is nevertheless a witness—and that is what we seek—to the current belief, whether of Jews or Christians at that early date or earlier, that this union was forbidden, either here or elsewhere, *i.e.* in Leviticus. (See note 6.)

There is no need to exalt, as the Promoters complain that some have done, the authority of the Septuagint above the Hebrew original. It is not a question of authority, but of witness.]

4. The next witness, acknowledged throughout the East, is the Council of Trullo, which enlarges the Canons of St. Basil mentioned above; while a little earlier, A.D. 668, Theodore, a learned Greek of Tarsus, and afterwards Archbishop of Canterbury, declares the same rule to be that of both East and West, adding that "a man is in marriage equally united with those of his own blood and those of the blood of his wife after her death," —*i.e.* equally prohibited from marrying either. (Dr. Pusey before the Royal Commission.)

5. So little doubt had there been at any time of the originally

*incestuous* character of this union—such doubt as might have arisen if the prohibition had been newly imposed—that so far back as the first half of the fourth century the Synod of Ancyra treats the prohibition as extending to the sister of one with whom even illicit connection had been contracted. Later comments confirm this, and it has been universally accepted. [See also latter part of note on "One Flesh."]

6. Churches too, which, about this period or earlier, became separated from the Orthodox Eastern Church, and are therefore independent witnesses to customs and interpretations of still earlier times — Nestorians, Abyssinians, Copts, Syrians, and Armenians—are all, it is stated, at one with the rest of the Church in this to the present time.

The whole of Eastern Christendom presents therefore an unanimous and unbroken witness to the unlawfulness of this union from the very beginning *down to this day*.

7. We have no more reason to fear the closest inquiry into history in the progressive West than in the "unchanging East."

Going back some fifty years beyond the time when St. Basil was appealing to unbroken usage and belief in Asia, we find the local Spanish Council of Elvira witnessing to the same in Europe; for which purpose a local council is as truly competent, to the extent of the district which it represents, as a general council; and in the absence of any sort of counter evidence elsewhere, it is *primâ-facie* evidence of the *general* belief.

Thus in the next century a synod at Rome under Innocent I., in the sixth century several councils in France and elsewhere, with many more, down to the eighth century, and the "Ordinances of the Witan," as the canons of an English council at Enham are called, in 1009—all reiterate the testimony to the universal belief in the prohibition by God of all marriages of affinity, including that of the wife's sister.

All these early assertions and reassertions of the illegality of these unions indicate, not any uncertainty as to the existing Christian law, but probably some lingering local heathen traditions not yet overcome, and of course also the same ever-ready rebellion of human desire in individuals against law, human and Divine, which is prompting the present movement amongst ourselves. From the middle of the eighth century onward, with the exception of that of Enham in 1009, no definite

allusions to the question appear. The Levitical prohibitions were unquestioned, and this of course as one of them; thus it became and has remained ever since part of the Common, Civil, and Ecclesiastical law of Christendom.

8. The indefensible practice of dispensations from this law in the later and corrupt period of the fifteenth and sixteenth centuries did indeed shake its moral hold upon men's consciences afterwards; but the law remained unrepealed as a witness against them.

It is much questioned when this practice began; but the earliest case ever suggested, and a very doubtful one, was under Martin V. in the fifteenth century; and it is certain that when his successor, Eugenius IV., was asked to sanction a union with a wife's sister in the royal family of France, he, after consulting the great canonist Cardinal Torquemada, replied that the prohibition being Divine it was beyond his power to dispense with it.

A few years later, however, the notorious Alexander VI. (Borgia), himself charged with the grossest incest, and pressed by the solicitations of the King of Portugal, cast aside all scruple, and, in defiance of the unbroken usage and belief of fifteen Christian centuries, granted a dispensation for this particular union, and then followed it up with a dispensation to Ferdinand, King of Sicily, to marry his *aunt!* This was followed by the well-known bull of Julius II., issued at the petition of our Henry VII., to sanction the union of Prince Henry with Katharine of Aragon after the death of Prince Arthur, in spite of the acknowledged prohibition in Leviticus of marriage with a *brother's wife.* [See note (15) on "Katharine of Aragon."] From that time, in foreign countries, dispensations have been granted "with reluctance, for grave reasons, and to avoid greater evils" (Cardinal Manning), not only, however, for marrying the deceased wife's sister, but for other like unions forbidden in Holy Scripture. But as the force of papal bulls ceased at the same period to be recognized in England, these unions here have remained as they were before, in the eye of the law, incestuous and invalid. And let it not be forgotten that, at the Council of Trent, the very canons which, in face of much opposition, were drawn up and carried with a view to justify those dispensations, and rehabilitate the character of the Popes who had ventured upon them, do themselves testify to the truth of our contention that these marriages

are prohibited by the Holy Scriptures, while they claim authority for the Popes to sanction them: a truth of which, as we have now seen by the witness of all history—Jewish (before the Dispersion), Mahommedan, and Christian (East and West)—there was never any doubt seriously entertained till quite recent times.

9. In all this inquiry two considerations must be kept in mind; (1) it is granting to the Promoters more than they have any right to claim when we consent to trace the prohibition at all in historical documents. We might justly say, "Such prohibition is and has been an integral part of Christian marriage law as far back as you can trace the law; the presumption therefore is that it was founded on Holy Scripture; it is for you to search for proofs to the contrary, and to produce cases which throw serious doubt on this conclusion." And (2) there are no such cases to be found.

10. Much has been made by the Promoters of the extension of the prohibitions by ecclesiastical authority, especially in the Western Church, to the fourth, sixth, and, for a short time, to the seventh degree. A Church, say they, which for its own aggrandisement or profit, or even for supposed social benefit, could so stretch the principle of Divine restrictions, is an untrustworthy guide. This by no means follows. But it is not as a guide that we are now following the Roman Church or any other in history, but simply as a witness to the accepted belief that a wife's sister was from the first Divinely forbidden in marriage. And so long as we have no proof or reason to suppose that these additions were held to stand on the same ground as those within the third degree, their introduction and enforcement does not at all affect the witness. And we have clear evidence that a distinction was always recognized: Gregory the Great in the sixth century, Pope Zachary in the eighth, Pope Innocent III. in the twelfth, Thomas Aquinas in the thirteenth, followed by many others, *e.g.* Alexander of Hales—all lay down the distinction clearly. And the Council of Trent makes it plain that there never was any confusion between them in the minds of the well-informed. [See note (14) on this Council.]

So far from this acknowledged extension discrediting the witness of the Church to the original prohibitions or any of them, it makes it the plainer, as a house visibly testifies to the pre-

viously laid foundations. And again, so far from our believing that the *prohibition* of the wife's sister was a part of these additions, due to confusion between the original and the superadded prohibitions, it is manifest that, if anything was really due to this confusion of thought, it was the irregular *permission* of this union in after-times by dispensations.

Lastly, even Papal dispensations, from any of the original prohibitions, were never based or defended upon any doubt as to their being of Divine authority, but upon a theory that God had entrusted to the Pope a power of binding or loosing *some* (the council were afraid to say all) of those divinely imposed.

## VI.

*Principle and Motive.*—To most persons this evidence from history to the true meaning of the Divine law would be conclusive, even if the examination of the words of that law had not shown this same meaning to be practically unimpeachable. But there may yet be some to whom the *logical* argument, or argument from consistency and reasonableness of the law itself, will recommend itself yet more strongly. And indeed the argument from Scripture, irresistible as it is, might be altogether abandoned, and yet our position would be on these other grounds sufficiently strong to overbear everything that has been advanced against it.

1. First, then, the law as it stands, whether in Leviticus or in our Table, is no arbitrary law, but one founded on reason and formed on *principle*. Its motive we will consider further on. The *principle* on which it is constructed and by which also it is limited in its application—*i.e.* by which the degree of nearness of kin which bars intermarriage is fixed—seems to be this:—

*a.* A man is forbidden to marry any woman who is *near of kin* to him by *birth* (blood), or by *marriage* (affinity), whether by *his* former marriage to one of *her* near of kin by birth, or by *her* former marriage to one of *his* near of kin by birth.

*b.* The *principle of kindred* in this law is, that two persons are *near of kin by birth* to each other if either one of them is descended from the father or the mother of the other.

*c.* The *limit of application* of this principle is virtually that of nature; for beyond the third degree of distance between two

such persons marriage is very rarely possible, and in the rare instances of its possibility it is unnatural and improbable. The third degree is the limit of the examples both in Leviticus and in the Table of Degrees. [See note (16) on "Methods of Reckoning the Degrees."]

No law could well be more perfectly self-explaining than this is, both in its principle and its limitations. And it must be evident to the reader that this is not only, as we shall see, a strong practical reason for trusting its wisdom and maintaining it intact, but a very irresistible proof that we are right in interpreting Holy Scripture as we do; for the antecedent improbability of any arbitrary inconsistency in a Divine law is overwhelming.

The result of applying this principle, with the natural limitations which attach to it, is easily brought before the eye in the following conspectus, which exactly coincides with our present law.

There are three classes of possible relationship: one by birth, or blood, and two by marriage, or affinity.

| | | |
|---|---|---|
| A MAN MAY NOT MARRY HIS OWN RELATIVE BY BLOOD WITHIN THE THIRD DEGREE. | His Mother ..... | 1st degree. |
| | His Daughter ... | |
| | His Sister or Half-Sister ..... | 2nd degree. |
| | His Grandmother ..... | |
| | His Granddaughter ..... | |
| | His Aunt..... | 3rd degree. |
| | His Niece ..... | |
| A MAN MAY NOT MARRY ANY OF HIS WIFE'S RELATIVES NEARER IN BLOOD THAN HE CAN OF HIS OWN, *i.e.* WITHIN THE THIRD DEGREE. | Her Mother..... | 1st degree. |
| | Her Daughter ... | |
| | [Her Sister or Half-Sister]..... | 2nd degree. |
| | Her Grandmother ..... | |
| | Her Granddaughter ..... | |
| | Her Aunt..... | 3rd degree. |
| | Her Niece ..... | |
| A MAN MAY NOT MARRY THE WIDOW OF HIS OWN RELATIVE BY BLOOD WITHIN THE THIRD DEGREE. | His Father's ... | 1st degree. |
| | His Son's ..... | |
| | His Brother's or Half-Brother's ... | 2nd degree. |
| | His Grandfather's ..... | |
| | His Grandson's ..... | |
| | His Uncle's..... | 3rd degree. |
| | His Nephew's... | |

The above contains in an abbreviated form all the relations named in the Table and forbidden by our law.

The result may be presented to the eye with equal or greater clearness by referring all relationship direct to the man, thus :—

| | | | |
|---|---|---|---|
| His Relations by Birth (Consanguinity). | His Mother ..... | 1st deg. | *The degrees will be the same in the parallel cases below.* |
| | His Daughter ..... | | |
| | His Sister or Half-Sister] | 2nd deg. | |
| | His Grandmother ..... | | |
| | His Granddaughter..... | | |
| | His Aunt ..... | 3rd deg. | |
| | His Niece..... | | |

| | | | Commonly called |
|---|---|---|---|
| His Relations by Marriage (Affinity). | His Mother ..... | by (*his*) marriage. | *Mother-in-law.* |
| | His Daughter ..... | | *Step-Daughter.* |
| | [His Sister or Half-Sister] | | *Sister-in-law.* |
| | His Grandmother ..... | | *Grandmother-in-law.* |
| | His Granddaughter ... | | *Step-Granddaughter.* |
| | His Aunt ..... | | *Aunt (-in-law.)* |
| | His Niece..... | | *Niece (-in-law.)* |
| | His Mother ..... | by (*her*) marriage. | *Step-Mother.* |
| | His Daughter ..... | | *Daughter-in-law.* |
| | His Sister or Half-Sister | | *Sister-in-law* |
| | His Grandmother ..... | | *Step-Grandmother.* |
| | His Granddaughter ... | | *Granddaughter-in-law.* |
| | His Aunt ..... | | *Aunt (-in-law.)* |
| | His Niece..... | | *Niece (-in-law.)* |

It is easily seen that this is logically consistent with itself throughout; each class has the *same number* of relatives prohibited; each respectively standing in the *same relation* in each class; and, of course, each respectively in the *same degree*, direct or indirect. Now, what the Promoters ask of us is permission arbitrarily to take, out of *one* class only, *one* prohibition only, namely the one in brackets, and yet to leave the force of the others, even those of precisely corresponding relation and degree, unaffected! This is hopelessly illogical. It would be simply impossible.

2. No wonder that we find them eagerly catching at any suggestion which may appear to unthinking persons to throw doubt or discredit on the soundness of the principle, or of our application of it. Thus, for instance, cousins, as will be seen at once, are outside this limit; and they are also, by consequence, outside the prohibitions of our law; nevertheless the Promoters

persist, even so lately as in their "Summary" (page 4), in repeating that they are involved in our principle.

3. The same desperate anxiety to discredit this principle is shown in the assertion that it must involve our prohibiting the man from marrying his wife's brother's wife, *i.e*, *her* sister-in-law, because he is forbidden to marry *his own* brother's wife.

A reference to the principle of the law, as set forth very clearly above two centuries ago in the Westminster Confession, would have saved them from this blunder. "A 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." This is the principle of the second class of prohibitions on page 28 above. The wife's brother's wife is not her blood relation. Or it may be explained thus: The bar to marriage does not extend in any case through a *second affinity*.

4. Even a practised lawyer like Lord Penzance, incredible as it may be, allowed himself to argue that the principle of our law would prohibit the man's brother from marrying the man's wife's sister—in other words, prohibit two brothers from marrying two sisters. A very little thought will convince the reader that it does not touch such a case. The idea may indeed be reduced *ad absurdum* by supposing the two marriages to be solemnized simultaneously, and then asking which had barred the other. But it is evident that a single or direct affinity, *i.e.* relation by marriage, can only exist in consequence of one of the parties themselves having married already a blood relation of the other; and the second of the brothers and of the sisters (1) may never have been married at all, and (2) have certainly not in the supposed case married any blood relation of the other. There is indeed a very conclusive reply also in this broad principle that no one could by his or her own act (*i.e.* of marriage in this case) bring a moral restriction of liberty upon another, except in relation to himself or herself.

It is indeed incontestable that the above principle is both simple and perfect in its support of the law which is revealed to us.

5. This Divine law, then, so clearly laid down, so broadly based, and so self-consistent, is as a whole unassailable; neither, it is evident, can any one part of it be touched with any regard to the consistency or integrity or continued maintenance of the

rest; yet this is what the Promoters would not hesitate to do. While professing respect for the law as a whole, and sometimes deprecating, sometimes cynically inviting, further assaults upon it, they work steadily at the breaking down of the one prohibition against marrying a deceased wife's sister. The rest, whether any one wishes it or not, will, we all know, follow.

"It suits the more cautious of the Promoters to assert that they only ask for one relaxation. The more candid, and the bolder, speak out. The late Earl Russell in 1859 said:—'The law would be utterly imperfect unless it was further altered so as to make it applicable to both sexes, and to all the degrees of relationship which have been mentioned.' A meeting of two hundred persons at Leeds was held only a short time ago at which a resolution in favour of Lord Dalhousie's Bill was carried. It was then proposed, "That a woman should be allowed to marry her deceased husband's brother." This was carried also, six hands only being held up against it. There can in fact be no doubt that the whole Table must go if one infringement is permitted. And this was the meaning of the indignant exclamation of a Member of the House of Commons when he said, 'Why does not the honourable proposer marry his grandmother like a man?' In other words, why does he not confess that the removal of one restriction destroys the principle on which the whole Table is founded?" (Hessey's "Six Objections.")

## VII.

The character and value of a law may also be measured and its Divine origin traced by the *Motive* which inspires it. The *motive* of this law, over and above the repression of moral impurity—although it cannot be fully realized apart from that of the whole law and treatment of marriage in the Divine counsels—is well expressed by Dr. Temple: "It seems to me," he says, "unmistakeable that the purpose and motive always has been to protect the purity of the family. It is as a matter of fact quite certain that there is nothing which so surely protects the purity of the domestic circle as the impossibility of marriage within it; that the impossibility of a marriage with a sister by blood is the real bar which in cases of temptation pro-

tects the family from impurity absolutely without restraint, and that anything which would interfere with the prohibition of the marriage of those who are nearly related by blood would very seriously affect the purity of the home and the morality of all Christian people. And it seems to me further that in the prohibitions of marriage within near degrees of *affinity* the case is precisely the same. It is intended to throw over the wife's family precisely the same shield as that which is thrown over the man's own family." (Speech at Exeter Diocesan Conference.)

"The principle," he says again (in the House of Lords), "begins with the consecration of the family; the purpose is to defend and guard the household, to consecrate a circle within which there shall be the warmest, the strongest, the deepest affection, but not the very slightest touch or breath of passion, within which they shall neither marry nor be given in marriage, but be as the angels in heaven. That is what has consecrated all those restraints. And then it follows immediately that when one of this consecrated circle marries he brings his wife under the same consecration. She comes there to find in her husband's father and mother a new father and mother, and in her husband's brothers and sisters new brothers and sisters. And she, too, should be a consecrated thing in their eyes, and there should be the deepest and warmest affection between them, which should never be touched by the breath of passion. So, too, when the wife marries, she brings her husband within the same consecration. Part of her joy and delight is that she is giving her mother a new son, her brothers and sisters a new brother, to be hallowed and blessed by this consecration, founded on the Divine law. Here is a principle which we know we can defend, and here are limits so clear that we find them in the Bible plainly set forth: on the one hand, in the Old Testament, the doctrine that the husband brings the wife under the shield of this law; and on the other, by words to which it is impossible to give any other meaning, the words of our Lord Himself, that whatever might have been the case in the past, thenceforward man and woman, in accordance with the original creation, are to be, in regard to this matter of marriage, precisely on the same level. If any man is not content with two such intimations of the Divine purpose, I do not see how such a man can use the Bible at all. I do not deny that twenty years ago, if I had been

asked for an opinion on this subject, I should have said that, though I could not bring myself to approve these marriages, I did not quite clearly see why they were forbidden; but every successive year of study has wrought the conviction deeper and deeper in my mind that there is a Divine *purpose* in the matter."

## PART II.—"*PLEAS.*"

### VIII.

We have been now carried through that part of our discussion which rests on "arguments" specially so-called, based on facts in the past and present, and demanding our recognition of the old English Law of Marriage as identical with the Divine Law in letter, spirit, and principle; it remains now to examine the "Pleas" and counter-pleas which appeal to our regard—(1) for social happiness and security; (2) for public policy; and (3) for the feelings, consciences, and liberty of the many in the future.

1. And throughout let us remember that in estimating the future result of the proposed change it would be self-delusion to confine our view to the immediate probable effect of this one relaxation.

The existing horror in the minds of the majority of thoughtful people at such incestuous connections, as they feel them to be, may serve as a check upon any extensive indulgence in them at first or any extension of the relaxation to other degrees for the present generation; but experience in other countries leaves no doubt that when once the principle of the old law has been violated by one exemption, others from which we now shrink with disgust are demanded, and, the principle being lost, are irresistible, "*facilis descensus Averni*"; and in this case "*vestigia nulla retrorsum*"; nothing can restore the lost blessing to our family life.

2. Now, for whom are we called upon to make this reckless sacrifice? It cannot be, and it is not, denied, that it is for a few, a very few, who have almost all of them already broken through the restraints of the law wilfully, and now seek, cost what it may to society, to have the law altered, nay, destroyed by alteration, to save them from the social consequences of their own unlawful act.

The laws of society are framed for the greatest happiness of the greatest number; the law as they would have it would have precisely the contrary aim and end; it would sacrifice the happiness of thousands of happy circles for the indulgence of probably the very smallest number of individuals for whom public legislation was ever proposed. And "if," said the *Times* in 1871, "the small class of those who do desire such a connection are now debarred from following their inclination, they do but suffer a disappointment which is patiently submitted to every day for far less urgent reasons."

3. And what is the sacrifice that by so far the greater number are asked to make for these few? Many, even of those from whom the sacrifice is demanded, are slow to realize what it involves. That home life of England, which foreigners appreciate even to envy, is to us one of those things which we never knew what it was, or what it could be, to be without, and never shall, most of us, know until, which God forbid, we are robbed of it.

It has ever been a chief aim of marriage laws everywhere to widen the circle within which family life and happiness can breathe freely and safely; every piece of the fence of the marriage law that you break down, to say nothing of those that will certainly follow, is a narrowing of this happy circle, and shuts out some of its members. This sounds paradoxical, but it is true; for every relative now forbidden who shall be admitted among those allowed to marry is thereby *ipso facto* shut out and lost from the freer and purer circle of the home.

But the cruelty of the proposed change is not to be measured merely by its narrowing effect on the family. The family is but the unit of society; undermine the happiness of the family, cramp its freedom, break down its safeguards, open the door to unnatural jealousies, and society will lose much of its sanctifying and steadying influences.

4. So far we have spoken of the family and society in general; but it may be that the mischief is easier seen in the individuals more immediately affected, and specially those affected by the particular movement in question.

Briefly, then, sisters-in-law will be abolished and aunts lost; at first only on one side, the wife's, the most precious side; but soon, how soon we know not, on both sides; altogether.

"At present a wife's sister is in most cases thrown into such

intimate connection with a man's family that she is regarded as his own sister. She is in his household as freely as his own sister, in his wife's illnesses or troubles she comes without asking or being asked, to nurse or to console at once. She is a most confidential friend of both parties, and at his wife's death she may live under his roof without suspicion, and become during his widowhood, the kind educator of his children. No matter whether she is young or old, no reproach can attach to her. As the wife, when alive, is unable to look upon her as a possible successor in wifehood, so, after the wife's death, the world has not a word to say against her assuming an office which might, in any other young woman's case, lead to wifehood or unlawful connection, and might therefore be regarded as dangerous. Are they to be deprived of this mutual comfort? I remember that a distinguished Member of Parliament, being then a widower, said to me many years ago with great indignation: 'Since my wife's death, I have enjoyed the greatest consolation in securing a most kind aunt's care for my children, and a most kind sister's ever-present attention for myself. Am I to be deprived of this because a few selfish persons have determined, *coûte que coûte*, to abolish sisters-in-law, to prevent my having my children's aunt in my house, unless I am prepared to make her my wife? Granting for a moment that a sister-in-law or aunt is one of the best guardians for my orphaned children, why divert her affection from them to children of her own? Why convert her into a possible step-mother?' Even if the law of God were not against this union as incestuous, the dictates of the most ordinary rules of prudence would set us against legalizing it as inexpedient." (Dr. Hessey.)

"Let me add that it is notorious that the feelings of the great mass of women are even stronger, if possible, against the measure than those of right-thinking men. And, moreover, it is very hard that a maiden sister-in-law, perhaps without any home but her brother-in-law's house, should be unable, after her sister's death, to enjoy that protection any longer. This particular hardship is much felt by those who in other countries have been made, for the indulgence of a few others, possible wives, only to be shut out from the natural position of sisters and aunts."

5. It is almost incredible that any should be found to deny or doubt that the sister-in-law's position would be altered; that Lord Penzance could venture to say in Parliament, that "though

her dwelling with her widowed brother-in-law might be open to scurrilous remark, yet really the competency of the parties to marry if they wished would tend to obviate scandal; since the fact that they did not marry would show that they had no inclination to do so" (!) Now, beside another answer, which is obvious, it is plain that if this argument is good for anything it proves too much, for it would show that there would be no just ground for objection in any unmarried woman living without protection in the same house with any unmarried man.

Moreover it is truly urged that no marriageable woman with any sense of self-respect would place herself in a position in which she might seem to be inviting an offer of marriage; yet such must be her position under the proposed change.

The Promoters, in their desperate attempts to parry this plea on behalf of the sister and the children, and to make out that no difficulty would arise, have committed themselves to the assertion ("Summary," pages 12 and 13) that at present "cousins and others may and often do" assume this position. If they mean marriageable women, it is simply not a fact; if they do not mean this, then it is scarcely sincere not to say so; but of course this would have destroyed their argument.

6. It is, again, scarcely necessary to slay over again the self-slaying, and at last abandoned, plea for the orphaned children of the first sister. The old constant question, "Who could make a better step-mother than their own aunt?" is not to be found in their "Summary"; and it is well; for it is not only open to a direct counter challenge, "Who would be more likely to make a bad one?"—which many shrewd people would ask,—but is defeated by its own proposers; for if the second sister is young, and is to be a possible step-mother, she is obviously excluded from the house of her nephews and nieces altogether, even as their aunt and guardian, by delicacy of feeling, until so long a time has passed as shall make it decent for their father to marry again, and until such a time as shall further enable him to contract an affection which could not have arisen innocently previous to her sister's death. This is, it seems, at last silently admitted by the Promoters, and numbers of orphan children are to lose their aunt, that their father may have the liberty, which he does not, except in rare cases, wish for, of marrying her. It

is we, then, who are pleading for the orphans when we plead for the retention of our present ancient law.

7. The Promoters indeed have of late most unkindly abandoned their former anxiety for children; at one time the children of the second sister also, born out of lawful wedlock, were made to serve as objects of pity, suffering social disrepute as illegitimate. Now we must suppose that they acknowledge the obvious reply that if such a plea is good for the honourable recognition of the offending parents, it is good also for the justification of every kind of intercourse whereof illegitimate children are born. That the "sins of the fathers should be visited on the children" is a law not of our making, nor within our power to repeal.

8. Time was, too, when the "poor" man with his motherless children was held up as in special need of permission to marry his wife's sister; this plea, too, is now, with more honesty and wisdom than generosity, thrown over, so far as their "Summary" shows. It has disappeared before the exposure of its groundlessness by the late Lord Hatherley, after most careful inquiry. "A clergyman," he says, "once wrote to me saying, 'I assure you that many of the poor earnestly desire this change.' I replied," he adds, "I only want to come at the truth; send me their names and residences.' I never heard another word from him." "If ever," he says elsewhere, "If ever there was an untruth, this is one of the greatest." It is to the Promoters' credit if they have withdrawn it; but Mr. Broadhurst last year made effective use of it, even asserting that "these marriages were far more numerous among the working classes than among people of higher station;" and this notwithstanding the fact that, out of the sixteen hundred and forty-eight marriages and wished-for marriages within any of the forbidden degrees (all that their own paid agents could discover, and a very small fraction, of course, of the whole number of marriages in the kingdom*) not more than forty, "a fraction of a fraction," occurred among the poor.

Furthermore, if we are to legalize a forbidden connection because it has recommended itself to a certain proportion of the

* A moderate estimate computed upon the basis of the Registrar-General's Returns makes the marriages during the period covered by their inquiry amount to at least *four millions*.

lower classes, however small, we must go much further than the wife's sister; for whereas in a population of 60,000 in two Westminster parishes, of whom 26,000 were of the lowest poor, those who had close acquaintance with them in their homes only knew of *one* instance of marriage with a deceased wife's sister, and that one looked down upon by the neighbours (Lord Hatherley's Speech), and whereas the experience of a clergyman of many years elsewhere showed only *three* cases of a deceased wife's sister, he had met with twenty-five cases of grosser incest still.

| | |
|---|---|
| Living wife's sister (incestuous bigamy) ... ... | 2 |
| Own daughters ... ... ... ... ... | 7 |
| Own sisters ... ... ... ... ... ... | 10 |
| Own nieces ... ... ... ... ... ... | 6 |

## IX.

But the mischief is wider in its reach than the family: it would be a grave *Political* blunder to abolish this restriction; a fatal blunder to make its effect retrospective by enacting, as by this Bill, that all such unions in the past shall be deemed to have been valid marriages—(an attempt, by the way, as Lord Selborne pointed out, to enact belief in a falsehood); a worse blunder still to do this on the demand of those who have already openly broken the law and dislike the social inconvenience and penalties.

It would be for the future an accepted plea for relaxation of a law that it has been already broken, and that the natural and necessary mischief which has resulted from its breach to third parties, such as the children, is a reason, not for making it a greater offence, but for making it no offence at all. In the present case it is precisely the offenders who supply the whole agitation. A Bill to legalize these marriages *for the future* would have little or no support. "The fact is well known that certain persons have broken or desire to break the law; and an agitation now extending over fifty years has been carried on by a profuse expenditure of money for this purpose. They have first exaggerated by hundreds the number of instances in which the law has been broken"—and have actually tempted more people to break

it, by advertising (we must believe under misapprehension) false information as to the existing laws—"and then urged that it must be a bad law, because it has been broken!" The success of such methods would surely be a great blow to our respect for Parliamentary legislation.

Nay, one of their advocates, a "Law-Lord," has so little regard for our faith in lawyers and lawmakers as actually to hazard the suggestion "that it was a mischievous thing that a law should be in existence which people are tempted to disobey;" on which the *Times* remarked very truly that it would "surely be more accurate to say that it would be a very idle thing to make a law which no one is tempted to disobey."

It is this reckless way of treating the whole principle, both of this law and of law in general, which justifies us in charging the movement with grave political wrong, and its promoters with selfish inconsideration, and, in their arguments, with doubtful sincerity.

Public opinion recognizes this, the *Times* being our witness, *May*, 1883.—"It must be confessed, even by the most sturdy advocates of the Bill, that it is an exceedingly illogical measure. Going so far as it does, there is no conceivable reason why it should stop where it does. In fact, its very peculiar limitations are entirely fatal to all belief in the sincerity of the arguments advanced on its behalf. That its advocates are very much in earnest in wanting to be allowed to marry, or to be relieved of the consequences of having married, their deceased wife's sister, is of course undoubted; but that they have any sort of conviction of the public utility of the measure, or have arrived at its advocacy by any kind of serious reasoning, cannot be maintained in view of the ostentatious contempt for principle of every kind shown in its drafting. The remarkable statistics given by Mr. Gladstone in 1855, and quoted by Lord Cairns, show, what no candid man can doubt for an instant, that the deceased wife's sister is only one out of many possible relations by marriage whom men desire to marry; but the Bill does nothing to remove the cruel barriers that separate a widower from his wife's niece or his own step-daughter, and every man from his brother's widow. Mr. Gladstone found that for 144 men who married their deceased wife's sister there were 46 who married their deceased brother's wife, and 17 who married their wife's niece.

To legislate for the 144 and leave the 63 unhelped is obviously inconsistent with any real desire for the improvement of the law or the enlargement of public liberty."

2. Nay further, it is, we say, inconsistent with any regard for the vitality and efficiency of law, whether of the marriage law in particular or law in general. To manipulate any law in such a way and in such a spirit must weaken the hold that law ought to have on men's minds and consciences generally; as it has been forcibly urged recently—"No precedent surely would be much more disastrous to the conscience of a nation than that a few rich men should succeed in forcing on a relaxation of the law in order to rid themselves of the penalty of having broken it."

And looking to the effect on this one branch of legislation alone, it is manifest that to leave an exceedingly important and wide-reaching law like that which regulates marriage and, through marriage, all that is best in society, with no principle in it, is fatal to the stability of the law itself and to the character of a statesman who consents to it.

For it has been repeatedly said, but none too often, that there is no principle of restriction which can be substituted for that which must be thrown away to admit these unions—no permanent foothold between our present standing-ground and a chaos of "confusions."

"A good marriage law ought to embrace the maximum of simplicity and the maximum of certainty: of simplicity, because it affects every class and almost every person, the most humble and illiterate as well as the most exalted and learned; of certainty, because it affects a contract and social relation the most important that can arise between human beings; because it affects the foundations of society itself, and influences the fate—it may be the eternal fate—of innumerable individuals." (Royal Commissioners' Report, 1868.)

3. Looking too, as we are bound to do, to the future, and applying thereto the experience of the past, we shall not forget that "in all times and in all places a moral revolution within the domestic circle has preceded the public outbreaks of general anarchy which have thrown whole nations into confusion, and undermined the best ordered and most wisely-constituted States." (F. Arnold, "Turning Points," &c.) [See also note (17) on the "Experience of other Nations."]

## X.

In all these "pleas," whether in urging the good or in exposing the bad, we have hitherto pleaded for no special class or community; but it would be hardly fair to so large a body of our fellow countrymen as the Established Churches both of England and Scotland, to say nothing of Scotch and Irish Episcopalians and Presbyterians, if we were to ignore the very cruel burden which would be put upon the consciences of the clergy especially, and indirectly on the loyal laity, by compelling them to condone in God's name, the one by receiving to communion, and the other by communicating with, those who, they are bound to believe, are living in "notorious sin." For nothing less than this has been admitted only the other day by the Secretary of the Promoters' Association to be their intention; and certainly they have, both in their Bills and in their treatment of amendments, given no reason to doubt it.

To the Promoters, indeed, the removal of the State prohibition would seem to be a complete legalization of such unions in the sight of God. But on the other hand there are many thousands of our fellow countrymen who hold fast and feel strongly the truth of Sir Herbert Jenner Fust's declaration in his judgment in Ray *v.* Sherwood: "Whatever may be the effect of [an] Act of Parliament, the marriage had between these two parties is an incestuous marriage, and must ever so remain. The law of God cannot be altered by man. The Legislature may exempt parties from punishment; it may legalize, humanly speaking, every prohibited act, and give effect to any contract however inconsistent with the Divine law; but it cannot change the character of the act itself, which remains as it was, and must always so remain, whatever may be the effect of the Act of Parliament."

## XI.

The Arguments and Pleas against this revolution in our domestic relations have now been briefly, but it is hoped intelligibly, set before the reader, and the arguments and pleas of the Promoters as they are found in their own "Summary" and

elsewhere have been all either directly or indirectly met and confuted. Not every separate attempt at argument or pleading in their "Summary" has been separately noticed, this would be impossible within reasonable limits; but those unnoticed consist entirely of general charges of poverty, triviality, or inconsistency in our arguments; or dark hints of fearful, but unexplained, consequences; or amusingly confused misstatements about marginal readings, and "Karaite variations"; or scornful depreciation of the Septuagint as an *authority*; or long discussions on the *legal force* of the Canons; both which last are quite outside the question in hand.

2. It may be not out of place to warn the reader against the misrepresentations of historical facts into which they have been led by some one,* and which have been so ruthlessly exposed by "Historicus," † whose conclusion we are constrained by the grave nature of the issue reluctantly to quote;—"That such methods of controversy are profoundly immoral goes without the saying; and they are not more immoral than ineffectual in dealing with readers who are thoughtful and well informed."

3. We shall surely not be called upon by the reader to answer seriously such other reckless arguments as have been actually brought forward by some on such premises as the following: that "all restrictions are evil;"—(a licentious fallacy," as it has been rightly called, for "marriage *means* restriction not freedom;")—that "no sort of affinity should be a bar to intermarriage;"—(which would shut out of the free home circle every one but the parents and children); that "the Divine Law has no claim to our allegiance if a human law (which means human will) to the contrary demands it;" that "no conclusions can be drawn from truths expressed in metaphor,"—(which would enable us to evacuate of all force nine-tenths of all statements whether human or Divine); that "because some of our colonies have legalized this union, it is our duty to do the same" —(which argument they have tried to strengthen by misstatements as to the effect of colonial legislation on the rights and responsibilities of the parties in England; and which would

* "A Few Facts from Early Church History." (Marriage Law Reform Association.)

† No. XXIII., Papers of the Marriage Law Defence Union.

commit an old settled experienced State to every piece of crude legislation adopted by the lower organization of an infant community. None of these extravagant arguments are, in fact, advanced by the Promoters in their recent "Summary."

It is probably very seldom noticed how destitute their case is of *direct* and *positive* arguments for the change,—of any answers to our challenge, "*Cui bono publico?*" — so that throughout their "Summary," as also in debates, even in the hands of able advocates like Dr. Vaughan, their case always exhibits the merely negative character of an attempt to parry the arguments *against* it.

## XII.

It has, however, been a favourite resource of the Promoters to cover the paucity and poverty of their arguments by marshalling an apparently great array of well-known and respected persons and bodies supporting their movement. Opinions are not arguments, still less are they proofs; but an imposing array of such "authorities" has astonishing effect upon many minds, until it is shown that a greater weight of opinion is really in the other scale. And this is easily shown; for if they can find five or six former judges, rather more ex-ministers, half a score of bishops, (all, but one, of a past generation— and these not in favour of the Bill, but only hesitating on the Scripture argument, which had then not been thoroughly mastered)—and one very deservedly respected dean, every one of these same classes and callings will supply to us much more than as many and more than as weighty names.

Happily, the divisions in Parliament and outside on this bill do not coincide with any recognized party "cleavage;" it is not yet degraded to a party question. Great lawyers, representatives of every political party, five Lord Chancellors—all, with one doubtful exception, that have been called upon to give their opinion—Lords Campbell, Hatherley, Cairns, Thesiger, and Selborne (not to claim, as we might, Lord Lyndhurst); Lord Chief Justices Whiteside and Coleridge, Mr. Justice Coleridge: all these and many other such have constantly and earnestly deprecated the change. Of Divines a host out of every section of Christendom and every school of thought might be quoted, not only as holding but as earnestly and actively defending our present law—

Dr. Candlish and Dr. Pusey, Drs. Begg and Guthrie, and the thirty-six other leading professors and ministers of the Scotch and Irish Presbyterians whose appeal forms No. VIII. of the Marriage Law Defence Tracts; of the Established Church, the whole existing bench of thirty-three bishops, with one exception; men so different in their general views as Bishops Wilberforce and Ryle, Bishops Phillpotts and Temple, Bishop Thirlwall, and Cardinal Manning; and of notable laymen, Lord Shaftesbury and Lord Salisbury, the Duke of Norfolk and the Duke of Argyll, the late Lord Beaconsfield and his great rival, Mr. Gladstone, whose speech is one of the best ever delivered against the movement.

If, then, intellect, judgment, recognized position, and freedom from bias, are the measure of authority, here is an overwhelming authority on our side.

But again, if opinions are to be "counted rather than weighed," is it not sufficient of itself to know that behind all these great names we have the almost universal opinion of eighteen centuries of Christendom, and the absolutely universal opinion of the first fifteen, shaken indeed by dispensations under political pressure in the sixteenth, but *never moved to change the law itself*—the law still of all the Churches—Eastern and Western, Roman Catholic and Protestant, Episcopal and Presbyterian? *

## XIII.

We "claim," then, to have proved that this union is prohibited by the *Divine Law*.

We claim this on the broad ground of the whole revealed mind of God concerning Holy Marriage, though more especially on the particular law of Lev. xviii. 6—17.

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* The truth of this statement is not affected by the fact that some foreign States and Colonies have in their *secular* legislation abandoned this restriction; for this is not the act of Christian communities as such, and is in some places, as in America and our Colonies, repudiated by the most influential Christian bodies.

We claim it on the unbroken *Testimony of History* (the contradictory traditions and morally-discredited custom of the modern Jews alone excepted) down to our own times.

2. We claim, independently of Holy Scripture, to have shown clearly that the law coincides with and rests upon a *logical Principle*, in place of which, if lost, as it would be by the proposed change, no other resting-place could be found; and that its perfect consistency with a clear principle points back again to its Divine origin.

3. We claim to have justly drawn the same conclusion from the evident *Motive and Purpose* of it, so high in aim and so wide and deep in its influence as to indicate something more than human wisdom in its very early origination.

4. We "plead" for the *Many* against the *Few*; for society against individuals. We plead for the free and happy *English home circle*; for thousands of *brothers-* and *sisters-in-law* who wish to remain such; for the *unmarried sisters*, who, say what men will, could not be as they are now in the married sister's home; for the *married sisters*, who will be losers of a great comfort in trouble and illness; for many an *orphan child* who must lose a loving aunt, that here and there another may have a doubtful step-mother, and to gratify their father's wish to marry the only single woman that the law forbids him; and lastly (for this further mischief has always followed in other countries), we plead for the orphan niece whose natural refuge, her uncle's home, will be shut against her.

And where are the counter pleas? The orphans and the illegitimate are no longer felt to be available in serious debate, and there is nothing left to plead for but the few unhappy men and women who having knowingly misplaced their affections are sore distressed at feeling the natural consequences.

5. We "protest" on behalf of our country against the reckless disregard of the *stability and moral force of all law*, which is involved in such a tampering with a great public law for private ends at the bidding of persistent organized agitation.

6. We protest, lastly, on behalf of the consciences of the many who as citizens and Christians would be placed in positions of extreme difficulty before God and man by the presence among them of those whose legalized relations as man and wife they could not recognize as holy marriage.

## XIV.

These arguments are not new, and the reiteration of them is wearisome; but the vitality of exploded fallacies is astonishing, and sheer perseverance has been a notoriously effective weapon in the hands of the Promoters. It has been lately said that "those who are contending for the purity and integrity of the Christian home might be less alarmed by the number of the votes given against them in the House of Commons" (and Lords?) "if they knew how few had yielded to a sincere conviction and how many to the unflagging insistence of a well-paid agitation."

It is a profoundly serious question on which we should—

"Nothing extenuate nor set down aught in malice."

"To extenuate" the moral, social, and political consequences of this movement is the part of the Promoters, which they have not been slow to act. "To set down aught in malice" is far from our wish, and quite unnecessary. If we have alluded to selfish motives they are such as lie on the surface, and could not be seriously repudiated; if we have expressed doubts of the complete sincerity of some of their pleas, it is with every allowance for the misleading effects of those motives; and in every case the grounds of our conclusions are put within reach of the reader, while we have been careful to distinguish between the original and active Promoters with their acknowledged spokesmen and the many who from good-nature, personal pressure, inconsiderate predilection for liberty, or from simple ignorance of the issues, support them by signatures or votes.

2. Let not the reader imagine that what we have said is the outcome of any narrow prejudice, any old-world traditions, or unpractical transcendentalism; of such influences he would, we suppose, readily acquit such men as Mr. Gladstone and Lord Selborne, who both have spoken warmly against the change.

3. Let him not be misled into supposing that there is anything approaching to a general or even a moderately prevalent desire for it in the country.

As to the poor, they do not know or think anything about it, unless questioned, in the rural districts, and the following is the

experience of a lay Scripture reader who had laboured many years among the poor in London :—

"Being in daily and constant association with the labouring and poorer classes; as one living among them, and being in their homes in the most poverty-stricken neighbourhoods; intimately knowing hundreds of the families of the superior working men, and also of those in the deepest poverty; being in the habit for years past of daily teaching many of the children of the very poor, and also being gratuitously occupied, and counting it a great privilege, in reading . . . . every Sunday to upwards of two hundred men of the labouring class—I know, from my own observation and the conversation I have had with many on the subject of the proposed Bill, that the marriage with the deceased wife's sister is not approved, and is very rarely to be met with among them."

And as to the upper and middle classes—the "reading public," as men say—whatever we may think of the power of the press, we shall readily allow that it reflects with a fair approach to accuracy the floating opinions of these classes, and no paper with so careful a desire to succeed as the *Times*; and this is what the *Times* felt to be the sense of the nation on the day *after* it was supposed on the last occasion, in 1883, that the Bill had been finally carried :—

"The strongest of all arguments against the proposed change is that it deals in a superficial and wanton manner with a subject which lies at the very root of the whole social system. The law of marriage ought to be hedged about with all the sanctions that the most careful and serious treatment can give. It ought not to be meddled with save for very cogent reasons, on very broad and intelligible principles, and for ends desired and approved by an overwhelming majority of the people of the country. The Bill to which the House of Lords gave its assent last night * is as far as possible from satisfying these reasonable conditions. It is notoriously the fruit of an agitation got up and kept up by a few wealthy persons, who have no other end in view than accommodating the law to their personal convenience. It bears on its face the evidence of its origin in a purely selfish and self-regarding impulse.

* It was afterwards thrown out on the third reading.

"It does not pretend to finality, it settles nothing and unsettles everything, it upsets a time-honoured and intelligible principle, substituting for it nothing but an arbitrary enactment, and if it relieves a certain number of persons from the consequences of wilful disobedience to the law, it inflicts upon a great many innocent persons all the inconvenience that must arise from a great and sudden change in their relationship. When all special pleading is set aside, every one knows very well that a sister-in-law whom a man may marry must stand in the same position as any other woman, with the added disadvantage of a known familiarity of intercourse which is not assumed in the case of a stranger. The proposed change is profoundly distasteful to many who do not attempt to balance the pros and cons of individual cases, simply because it is a reckless and, we might also say, impudent manipulation of the law upon a peculiarly delicate and solemn subject in the interest of a small number of wealthy people cynically indifferent to everything beyond their own desires." (*Times*, June 12th, 1883.)

4. As Christians, as Englishmen, as husbands, fathers, and brothers we implore our representatives in Parliament to resist this attempt to break down the safeguards and narrow the circle of our English family life, and legalize what we believe to be sin. We plead not only for ourselves but for our sisters, some of whom have even broken through their natural reserve to plead publicly for themselves; and we feel sure that Englishmen will not take advantage of that reserve to vote away from their sisters a defence which they will not consent to lose for themselves.

To uphold the present law is not to do injustice to any one, but only to refuse to a very few persons a new liberty which they cannot have without destroying the better liberty which thousands now enjoy.

# NOTES.

## (1) *On* "PETITIONS"—*p.* 1.

The greater number of these signatures were obtained some years ago "while men slept," and almost all from a few large manufacturing towns and districts, where there is always a certain restless readiness for change and relaxation, and none of that shyness about putting their names to anything that prevails in the same classes in the country. It was also said that at that time the signatures to some large petitions were many of them paid for, if not directly to the signers yet to the collectors. But now—during the present Parliament, especially during the last three Sessions—now, when people are getting to know a little more of the question, the number of signatures *against* the change, and especially the separate petitions against it (representing of course a wider area and more varied population) have largely outnumbered those in its favour.

It is quite a mistake to suppose that any greater value attaches in a question of this kind to the greater intelligence generally attributed to town populations. For (not to raise any counter-comparison of moral qualities) neither the urban nor the rural intelligence has any *knowledge* of the question upon which to exercise itself. If in either case an honest reply were given it would be, "I know nothing about it and care nothing;" the ignorance is the same in both; but to the Promoters of relaxations among the easy and good-natured multitude it is their best ally, to us it is our supreme difficulty—*experto crede.*

The writer has been struck with the fact that, within his own personal experience, though he has met with many of the upper classes who from ignorance or want of thought, or other cause, were disposed to favour the movement for relaxation, yet he never found any who, when the question was fairly set before them, did not admit the mischief or wrong of it, and yield to the arguments against it, *except* such as were directly or indirectly, by self-interest, by personal friendship, or by some previous action of their own, *pledged* or *committed* to it.

## (2) *On* "LORD LYNDHURST'S ACT"—*p.* 5.

The history and motive of this Act is as follows:—Up to that time if a man had married his wife's sister or any other relative, and the marriage were challenged in a court of law during their joint lives, it would have been declared void; but if unmolested till after the death of either, though the marriage was really no marriage, the children were entitled to be reckoned as if legitimate; because the Ecclesiastical Courts, to which all matrimonial causes were entrusted, were supposed to act wholly for spiritual ends, *pro salute animarum, i.e.* in these cases for the punishment and separation of the offending parents,

and not with any view to the temporal consequences to the children. This uncertainty in the status of the children was no doubt embarrassing, especially where succession to a title or estate was involved; and it was said that this uncertainty as to the civil consequences of such marriages had sometimes led to a further uncertainty as to the moral and legal wrong of the marriage itself, and so to its more frequent occurrence. Lord Lyndhurst resting his case upon this peculiarity in the past administration of the law as having been both a snare and an excuse to widowers and their wives' sisters, and a hardship to innocent children within his knowledge, obtained the passing of an Act which, without mentioning any case or actually validating any of these marriages, merely forbade the Ecclesiastical Courts to entertain the case of any then already contracted marriage within any forbidden degree of affinity with the purpose of annulling it; but at the same time, by the clause quoted in the text, removed once for all any doubt as to the illegality of such marriages and the illegitimacy of the children for the future.

## (3) *On* "One Flesh"—*p.* 7.

The declaration in Gen. ii., confirmed and further defined by our Lord in Matt. xix. 5, and Mark x. 8, and quoted by St. Paul in Eph. v. 31—"They twain shall become one flesh, so that they are no more twain but one flesh" (R.V.)—seems to contain within it, as it were in embryo, the three great principles of the Christian marriage law. (1) "They *twain*"—twain, and no more—involves the original limitation to *one wife*; (2) "They twain shall become *one flesh*" contains the principle out of which comes the *affinity* of each with the blood-kindred of the other, who have thus become "flesh of his flesh" (Lev. xviii. 6), and consequently debarred from marriage with him; (3) "One flesh, so that they are *no more twain*"—no longer separable—carries within it the principle of *indissolubility* of marriage, and is expressly declared to do so by our Lord's words immediately following, "What therefore God hath joined together let no man put asunder." In brief, polygamy, incest, and divorce are all, in anticipation by Adam, and in final decision by Christ, condemned together.

It has indeed been urged that the term "one flesh" is referred to by St. Paul in his Epistle to the Corinthians (I. vi. 16) in such a connection as to show that he took it in a merely parabolic sense. But to maintain this it must of necessity be shown that the Apostle here by the term "one body" (which no doubt is here equivalent to "one flesh") meant the same in *all respects* and to *all intents and purposes* which Adam meant, and that Adam's words are therefore to be limited in their meaning by those of St. Paul; and thus that Adam could not have meant anything affecting the force and consequences of lawful *marriage*.

But St. Paul himself in words too plain to be mistaken (Eph. v. 28–32), and a greater than St. Paul more plainly still (Matt. xix. 3–9) assert that it does essentially affect it. The conclusion, then, is inevitable; St. Paul did here also mean to assert a real *effective* union to *some* effect; but it is not therefore certain or even probable that an illicit union is to *all* intents and effects equivalent to an honest one; it does, for instance, St. Paul says, really

involve the abomination of taking our body, which is the body of Christ, and making it the body of another in sin,—but it *might* not *perhaps*, as a consequence of its reality, involve also permanency or indelibility in a case where the intention and consent of the parties did not impress it with that character;—I say, *might perhaps* not do so; for even if it do not involve such permanent union as to make it necessary to treat it as actual *marriage*, it always has been held to involve some at least of the *permanent consequences* of marriage, *e.g.*—

(1). It is a very prevalent opinion among Christian thinkers that at least a seducer is *ipso facto* bound to the seduced; and it was certainly so ruled by Divine authority for the Jews in Deuteronomy xxii. 28–29; and in this we see the mind, if not the law, of God for ourselves also.

(2). It has been already shown to have been the accepted rule that any illicit intercourse involves that consequence which is most directly to the point before us—viz., an affinity which bars marriage with the woman's relations. This consequence is distinctly recognized and enforced by our English Marriage Laws. [See the instructions of the Government to Superintendent Registrars; see also note below on Katharine of Arragon and Anne Boleyn.]

## (4) *On* "Implicit and Explicit Prohibitions"—*p.* 8.

*(See the Analysis of these at the end of the Notes.)*

Convinced as I am that in defending what we believe to be the Divine restrictions upon marriage, our really strong ground is the general law on which they claim to rest (v. 6), rather than any detailed instances, I know, nevertheless, that many minds are so much more affected by direct and definite rules that, the claim of principle notwithstanding, they will recur again and again, either with misgiving or a sense of escape, according to their previous bias, to any apparent incompleteness in detailed rules, such as those in the next verses (7–17); and though I am far from allowing the necessity on our part of accounting satisfactorily for such incompleteness, it is only right to do so if we are able; as I think we are, at least to a great extent. There is no difficulty, of course, in the fact that these prohibitions are *addressed* to *men* only. No one questions that they are to be taken as applying in converse to women; but there are still omissions which at first sight seem strange, *e.g.* mother-in-law, wife's aunt, wife's sister, own niece, and even own daughter, all of which, though implicitly forbidden, are not named expressly. But is not the true account of this to be discovered in the Patriarchal custom by which the whole of a man's family for two or even three generations usually "dwelt together" (compare Deut. xxv.), if not in one house, yet in one community—as in Russia and elsewhere now—only the married daughters and granddaughters leaving it for the communities into which they married?

The law, we must recollect, is set forth in the natural form and order, thus:—First, a solemn preamble (verses 1–5) asserting its motive and universality; secondly, the general enactment (verse 6); and thirdly, certain examples of its application (verses 7–17). In these last the Holy Spirit, still inspiring Moses, but not using him simply as a mouthpiece, not fettering either his usual mode

of thought or expression, nor obliterating the impressions of his daily experience and associations, allows him to name just such examples of incest as the habits of his people and their consequent temptations would naturally suggest to him, without conscious selection. For, with three easily explained exceptions, all the fourteen females that are named are such as would be living within the same patriarchal household or circle with the man himself, either born there or brought there by marriage. They are these—

| | |
|---|---|
| Mother. | Paternal Aunt by marriage. |
| Step-mother. | Son's Wife. |
| Sister—Half-Sister. | Brother's Wife. |
| Son's Daughter. *Daughter's Daughter.* | Wife's Daughter. |
| Paternal Aunt. *Maternal Aunt.* | Wife's Son's Daughter. *Wife's Daughter's Daughter.* |

The three exceptions are those in italics, and will be seen to occur only in those pairs of identical (not only parallel) relationships of which it would be unnatural and misleading to name one without the other.

And *vice versâ*, all the females *not* named, but coming within the principle of the prohibitions, are, with two only exceptions of any importance, such as would be living in other families. They are these, the exceptions (in italics) in this case being those who *would* be living in the man's own circle :—

| | |
|---|---|
| *Grandmother.* | Wife's Paternal and Maternal Aunts. |
| *Step-Grandmother.* | Own Maternal Aunt by marriage. |
| Wife's Grandmother. | *Granddaughter-in-law.* |
| Wife's Mother. | *Own Daughter.* |
| Wife's Sister. | *Own Niece.* |
| Wife's Niece. | |

The two last alone are, in view of marriage, of any importance, so as to need to have their omission explained. The case of the daughter surely needs no explanation—it is omitted because it required no mention; that of the niece is the only one that on the above hypothesis we cannot explain; and it must be remembered that the above account of the lawgiver's examples is not put forward as if it were likely to cover with precision *all* cases, for it could only have done this upon the supposition that Moses deliberately selected the examples with conscious reference to the patriarchal manner of life; which it is not supposed that he did.

The exceptions on either side may have been allowed to occur in these examples for the very purpose of showing that they *are* examples, and not an exhaustive schedule.

NOTE.—Some have maintained that the man's own daughter *is* explicitly forbidden to him in verse 17 in the words "a woman and her daughter," because his own daughter is always his wife's (deceased or living) also. But the converse is not true—that *hers* is in all cases *his*, *e.g.* a second husband's; and it is *her* daughter that is *explicitly* forbidden. The mistake is that of taking an *irresistible inference* for an *explicit statement*. It is indeed morally

equivalent, but it is not the same thing; it may be quite enough perhaps to account for the omission of the express prohibition, but it is only an inference.

## (5) *On* Leviticus xviii. 18—*p.* 10.

The antecedent improbability of the self-consistent principle of the law having been subjected to a grave flaw by an exemption, by inference alone from an ambiguous verse such as this is, has already been sufficiently shown; yet it may not be amiss to point out further indications of this: (1) Its *position* in the chapter is against it. "The verses 6 to 17," says a lawyer of considerable eminence, quoted by Dr. Hessey, "make up a statute law, and a statute most logically arranged. Verse 6 contains the general prohibitive enactment, 'None of you shall approach to any that is near of kin to him, to uncover their nakedness: I am the Lord.' Verses 7 to 17 contain specimens of the classes which come within that enactment under the words 'near of kin.' They show the scope of the prohibition. The advocates of the Bill found their chief argument upon the presumed negative pregnant contained in the eighteenth verse. They draw from it an inference which they set against the statute law expressed in the preceding verses. Were counsel to argue upon any other subject before Lord Bramwell by using an inference of this kind against a distinct enactment, what would he not say against it?"

(2) In particular, if its place is to be that of an exception, it would be immediately after the sixteenth verse, to the prohibition of which its prohibitive half is *ex hypothesi* parallel, and its inferential limitation the exemption. (3) Passing this by, its *form* is against it; for, though by inference from its last word it is to be an exception, it can only be so by making the rest of the verse another direct prohibition in continuance of those preceding it. But why, then, does it depart altogether from their form of expression—"Thou shalt not *retegere nuditatem* of thy brother's wife," "Thou shalt not *retegere nuditatem* of a woman and her daughter"—and begin for the first time with an "and" (repeated again in the following verse which is certainly independent)? Why not the same manner of expressing the relationship as in the supposed parallel verse 16? Why not "thy wife's sister," as in 1 Kings xi. 19? (4) Then as to the two words in conjunction, "a woman to her sister," or "one woman (or wife) to another," or "one to another." There are three possible ways of taking these two words in conjunction:—First, in the simple *primary* meaning of each, for which the Promoters contend—"a woman to her sister;" which would make it one solitary instance of their occurring together (out of more than thirty instances) in any but a metaphorical sense. Secondly, they can be taken, as elsewhere, *metaphorically*—"a woman to her sister-woman," *i.e.* to another woman—a common usage in every language, and the one adopted in the margin of our English Bible. And thirdly, both metaphorically and *idiomatically*, "the one to the other," *i.e.* adverbially, describing *how* they are taken, which is the way they are used of inanimate things in couples. It has been too readily supposed that if not taken in the primary sense they *must* be taken in the third and doubly artificial sense; and to this some scholars raise grammatical objections from the lack of an object for the verb and its adverb (or adverbial compound). But it is certain that

before ever these conjoined words could have attained this idiomatic, adverbial character, they must have passed through a long stage of familiar usage in the merely metaphorical sense which our Bible margin gives, and for which we contend as the most probable sense here.

Lastly, the concluding words of the verse, on which all claims to an exception or exemption must rest,—"in her life time"—have nothing to show that they refer to the first wife, and not rather to the sister, in the common sense of the words, "as long as she lives," *i.e.* for ever; *e.g.* "I will praise my God as long as I live"—the same Hebrew word; which if the verse did refer to two sisters would only make it a more express and emphatic prohibition of a union already by analogy prohibited in verse 16; this emphatic prohibition being perhaps necessary to prevent the example of Jacob being pleaded by his descendants. This view has been also maintained by many. The use of such expressions as "in her life time" to represent not merely up to the point at which it ends, but beyond it, is frequent in Scripture—*e.g.* Gen. viii. 7, "until the waters were dried up;" again, "until I make thine enemies thy footstool;" and again, "till she had brought forth her firstborn son," Matt. i. 25. Some see in this verse a limitation of the Levirate custom.

The conclusion of all this is that a verse capable of so many interpretations compatible with the law of which it forms a part cannot according to any acknowledged principle of reasoning be taken in that one only which violates it; more especially when that one involves a strange deviation from natural order, an exceptional use of a familiar phrase, and is, after all, nothing but an indirect inference from a term of doubtful meaning.

## (6) *On* Deuteronomy xxvii. 23—*p.* 18.

It is remarkable that this passage, little as it has been noticed in this controversy, was by some in ancient times, whether Jews or Christians we know not, understood to prohibit expressly by name the wife's sister in marriage, and with very good reason, as we shall see.

The passage, so far as it concerns our subject, stands thus in the Alexandrian MS. of the LXX., which is followed by the Vulgate and our English version.

1. Verse 20. Cursed *is* he that [*taketh*] his father's wife.

* *  * *  * *  * *  * *

2. Verse 22. Cursed *is* he that [*taketh*] his sister . . . .

3. Verse 23. Cursed *is* he that [*taketh*] his mother-in-law (penthera).

The Hebrew MSS—of which, however, the oldest existing are much later than the Alexandrian Septuagint—agree with this.

But in the Vatican MS. of the Septuagint, the oldest of all, the twenty-third verse stands thus, with an additional clause apparently interpolated:—

Verse 23. { [Cursed *is* he that [*taketh*] his daughter-in law (nymphē)]
Cursed *is* he that [*taketh*] the sister of his wife.

Passing over for the present this variation, and taking both the reading and interpretation of our English Bible, there appear at first to be three isolated cases of incest denounced under curse of God; and this apparent want of completeness has probably led to this passage having been so little valued as

compared with Leviticus xviii. But a closer consideration dispels this impression of incompleteness. The three curses upon incestuous connections, in verses 20, 22, 23, are not isolated or haphazard examples, but are directed respectively against the three classes of relations into which *all* the prohibited relatives of Leviticus, and of our law, fall;—first, those who are near of kin to a man by *their* marriage to *his* near of kin by birth, of whom the example given is the most obvious, as being applicable to either an only son or one of many, single or widower—viz. "his father's wife," v. 20; secondly, those who are themselves by *birth* near of kin to him, the example again being the most obvious—viz. "his sister" or "half-sister," v. 22; and thirdly, those who are near of kin to him by *his* own former marriage with one of *their* near of kin by birth, the example, *according to our English version*, being "his mother-in-law," v. 23.

Thus we get a simple account of the choice of these three examples; and the third class represented will of course include the wife's sister, daughter, niece, &c., as well as her mother.

But it is further remarkable that in the *Codex Vaticanus*, the oldest MS. of the LXX., "the sister of his wife" is actually given as the rendering of the Hebrew word, and not "mother-in-law." It is not contended that this is certainly right; but examination shows that the word is as likely to have meant the one as the other, or perhaps both. The facts of the case are briefly these: the Hebrew word used is "chotheneth," the feminine participle (masc., "chothén") of the verb "châthan" = to give or receive in marriage. From this root come two noun forms—(1) these participles "chothén, chotheneth," which seem always applied to those who "give" in marriage, *e.g.* the father-in-law, brother-in-law, mother-in-law (Exodus xviii., Judges xix.), or sister-in-law (?) in this passage, and probably all the members of the bride's family; and (2) a noun (originally also a participle), châthân, which means one who "receives" in marriage, *e.g.* a bridegroom, or, in relation to the bride's parents, a son-in-law. The verb came naturally to have a general and inclusive sense of "joining in affinity," as between two individuals or two families. (See "Gesenius' Lex.")

There is neither in the root nor in its derivatives any idea of father, mother, brother, sister, or son. "Chothén," "chotheneth," or "châthân," when divested of these ideas, which our own want of a general term, like the Latin *affinis*, has compelled us to import into them by translating them into "father-in-law," "mother-in-law," &c., are really general terms for all or any near relations by marriage, generally by one's own marriage. "I might," says Mr. Stooke Vaughan, who first called attention to this, "refer to many passages to show that the word [chothén] translated 'father-in-law' in our version refers to another near male relation of the wife; for example, in Judges xix, where the Levite is said to come seeking his wife to the house of his father-in-law (the same Hebrew word), it is added, "the damsel's father," by way of explanation; and why? Surely it is because the Hebrew word is indefinite in its meaning—referring to any near male relative of the wife—that these words are added to make it clear that it was the Levite's *father*-in law.

"The word occurs mostly with reference to Jethro and Hobab, each of which are spoken of as the father-in-law of Moses according to our rendering, and thus with Reuel or Raguel would be only different names for Zipporah's (Moses' wife's) father.

"Now that Reuel was Moses' father-in-law no one can doubt, but that Hobab was not will be seen by reference to Numbers x. 29, where Hobab is said to be the son of Raguel, and if so must have been Zipporah's brother—*i.e.* Moses' brother-in-law. Thus in these passages, where our translators have rendered the word 'father-in-law' with respect to Hobab, it must clearly mean 'brother-in-law.'" *

A remarkable example of the noun "châthân" is to be found in 2 Kings viii. 27, where Ahaziah, whom our English version makes a "*son-in-law* of the house of Ahab," was only son-in-law's son to Ahab. So that this passage shows that so far from the *giver* in marriage, the chothén or chotheneth, being thought of as necessarily the father-in-law, or the mother-in-law alone, the bride was given by and received from the whole household, who thereby became "chothenim"=*affines* to the man, who became "châthân" to them.

It is, then, impossible to confine the word "chotheneth," in Deut. xxvii. 23, to the mother-in-law. It probably means any female relation by one's own marriage, including of course "the wife's sister." But the LXX., not thinking here of using a general term, or being perhaps in the same difficulty as we are for want of a fitting equivalent in Greek for the general term which the Jew had in *chothén* and the Latin in *affinis*, (the derivatives of κήδω, owing their meaning to a different idea, being hardly admissible), seem to have looked for some special relation to serve as a representative of the whole class; and it must have been this perplexity which led to the use by them or by their copyists of two different terms; the Vatican MS. showing "the sister of his wife," while the Alexandrian gives "penthera," which the Vulgate and our English version render "mother-in-law."

It is a further interesting question whether we are any more accurate in translating the Greek "penthera" by "mother-in-law" only, than in narrowing the Hebrew "chotheneth"? It is true that, so far as the remains of classical Greek writers carry us, we have not found "penthera" except where the context seems to point to the mother-in-law; but the etymology of the word (Liddell and Scott) is just as indeterminate as that of "chotheneth;" and the parallel goes yet further, for just as the masculine form of the Hebrew is freely used for father and brother-in-law, &c., so is "pentheros" in Greek (compare also "gambros"); the exact relationship being determined by the context, or as I should say here, left undetermined and inclusive. But this is of no importance to our argument.

It has been noticed already at the beginning of this note, that the Vatican MS. also introduces in this chapter a fourth curse on incest, *i.e.* on incest with a daughter-in-law (not wife's daughter, but son's wife, *nymphē*) and that it has been often supposed that this was intended to represent

* Mr. Vaughan has worked out this point more fully in a small pamphlet on this prohibition, with an Introduction on Relations as expressed in Hebrew. (Skeffingtons.)

"chotheneth," while the "sister of his wife" was the interpolation. But a little consideration will show that it is the "nymphē" which is an interpolation, being traceable directly to Lev. xviii and xx. and being also incapable, either by usage or etymology, of identification with "chotheneth" or any of the wife's relations. (The Hebrew word here is "calah" = one who is crowned, and the Greek "nymphē" = one who is veiled—*i.e.* in both cases the daughter-in-law as a bride).

Even allowing, then, though without proof—for we have no Hebrew MS. that is not 500 years later than either of the two above-mentioned MSS. of the LXX.—that there is an interpolation at all, or any better authority for "penthera" than for "the sister of his wife" in the Greek, we should still have all we seek, viz., an indication that at a period as early as the fourth century a *belief* in the Divine condemnation of this latter union prevailed; and very good reason ourselves to believe, from the Hebrew word itself, that it *was* condemned by the Divine malediction.

The Promoters' "Summary," assuming the curse upon taking the "sister of his wife" to be the interpolation, calls it "the spurious corruption of a Christian scribe." Now, if it were such, it must be either (1) an unconscious slip of the pen, or (2) a mistake arising from a likeness between the genuine and the spurious, or (3) a wilful alteration. It is obvious that a difference so considerable between the two readings could not be attributed to either of the two first; but to make the third at all likely some probable motive must be shown, and this is impossible; for no one was likely to wish to open the door to marriage with a mother-in-law by getting rid of "penthera" at the expense of for the first time shutting it—for such, according to the Promoters' contention, would have been the effect—against marriage with a sister-in-law; and as to the suggestion insinuated apparently by the Promoters that it was due to a desire to multiply prohibitions with a view to dispensations and to the gain accruing to the Papacy therefrom, they are evidently unaware that no such pretensions of the Papacy then existed, that the additional prohibitions originated with the civil power, and that dispensations from them were unknown for some centuries afterwards.

## (7) *On* "Inequality of Sexes"—*p.* 11.

Is there not a confusion of ideas in this reference to an inequality? *Socially* woman was the inferior, and consequently the less free; and the desire for marriage and the right to marry is always treated as that of the man, as of him that "takes" the woman. Here is sexual and social inequality; but what bearing has this on the question before us? To account for a man being allowed to marry one woman and not another, the inequality must be *between the two women* in relation to the one man, which cannot be sexual or social, but, *if* anything, must be physiological, and that must be the same now as then. To speak, as some do, of the man being free to marry a sister-in-law, while a woman was (because inferior) not free to marry a brother-in-law, is a fallacious inaccuracy.

## (8) *On* Inherent Immorality; Laws Moral and Positive—*p.* 12.

There is a fallacy in the common notion of a distinction between moral and positive laws, as they are called—*i.e.* according to the common acceptation of the terms, between laws which commend themselves to our judgment and laws imposed for reasons not at once obvious; and also in the idea of an inherent morality in certain laws only, and inherent immorality (impurity) in the violation of these alone;--upon which idea the above distinction rests.

A certain moral instinct certainly seems implanted in us whereby we can realize the *existence* of abstract morality and immorality apart from the revelation of God's will, and can also attach this idea of morality to this or that law, whether made known to us by express revelation or by the wisdom of man, or by this very instinct within us. But though this instinct, given us probably to render obedience more willing, is trustworthy as a proof of morality in the abstract, it fails altogether as a test of its inherence in any given law, or as a *measure* of the immorality or impurity involved in the breach of it; and we are not therefore enabled thereby to distinguish safely between moral laws and positive laws, between acts *in themselves* impure and acts in themselves pure.

For that this instinct in fallen man is, for this purpose, wholly untrustworthy is proved by its manifold variations, not only in individuals, but in races, periods, and localities. The only test of the morally and permanently binding force of a law, whether revealed to us by instinct or revelation or both, is its *applicability*,—not to our consciences, but to our circumstances; or, in respect of Divine Law, its *general* applicability. Laws are either special or general, not only in their expressed intention, but in their inherent fitness for general or special enforcement. Within its own field a *special* Divine law consciously broken involves an act of immorality, but only because it is an act of disobedience. Everywhere, and in all men, a *general* Divine law, such as these prohibitions of incest, if broken consciously, involves for the same reason an act of immorality even in those who have no sense of the immorality in the act itself; while, to those who have, it is a grosser sin still. Now, no one can show anything in these Levitical prohibitions less applicable to us than to the Jews and Canaanites; nor have they ever been made special for them by being repealed for us under the Gospel; but rather by inference are strengthened and widened by being referred to their principles in our Lord's utterances on the subject of marriage. By vast numbers of people they are accepted also as inherently moral, and their breach as acts of impurity, by instinct; and this itself is an indication that they are really such; whereas the inability or unreadiness of others to accept this is no indication to the contrary, especially where the natural man is enlisted against the spiritual by a desire to satisfy even supposably honourable affections. We do not, however, rest our argument on this inherent impurity of incest, but on the immorality of disobedience to a general law.

## (9) *On* "THE LEVIRATE CUSTOM"—*p.* 13.

We have seen that, even if we grant that Deuteronomy, chap. xxv., sanctions, after the custom of the Levirate, marriage with a brother's widow under certain very limited conditions, and grant that this, if true, might be pleaded as disproving the inherent impurity of marriages in affinity, yet it would neither make them permissible to us nor disprove their actual sinfulness; and, further, that they are as a matter of fact declared to be impure as well as unlawful, and expressly, as a thing "abhorrent," that with a brother's widow. (Lev. xx. 21). Therefore the presumption *à priori* is that this passage does *not* command or sanction any such marriage.

We will now examine both the custom of the Levirate and the terms of this passage; and we shall find that though it certainly does sanction this custom in some sense, it does not sanction any such marriage. It must be borne in mind, first, that the custom was political or social, and not religious; and secondly, that it was not introduced into the Jewish polity by Moses; nor was it then, nor ever at any time, a peculiar Jewish custom. It had prevailed (Gen. xxxix.) at least three hundred years before among the Canaanites, and was followed by Judah in his family while sojourning, and intermarrying, with them; and we find it long aftewards again in Moab, when Elimelech and Naomi were refugees there. It is also known to have existed and still to exist, with more or less of limitation or none, among many other Eastern tribes and nations. [See Mr. Dodd's paper, No. XIX. Marriage Law Defence Tracts.] The abominable laxity, especially in respect of incest, which so prevailed among the Canaanites and their neighbours as "to cause the land to spue them out," had been, of course, carried by those peoples into their practise of the Levirate custom; and now under Moses God would recall Israel to better things by the law laid down in Leviticus; and while He sanctioned the continuance of the Levirate for the purposes of that social policy which was to isolate them among the nations, and keep each tribe of Israel distinct, He left it to be exercised only between those not within the degrees now prohibited afresh. Instead, therefore, of Deut. xxv. being a revocation of the prohibition in Lev. xviii. 16, on the contrary, this prohibition is a later revelation limiting the persons to whom the former by long custom applied. But it is not really necessary to suppose that the passage sanctioning the custom *requires* to be modified by the extraneous check of the prohibition; it does not really cover any of the same ground. If we carefully examine this reference in Deuteronomy to the exercise of the old custom among the Jews, we shall see how entirely it fails to prove that the case of a man marrying his own brother's widow is contemplated at all; and it will be allowed that even any doubt upon this point is fatal to the contention of the Promoters in the face of a clear prohibition of the union as unlawful and impure.

There are two Hebrew words in the passage upon which the whole question hangs: the first is "ach" = brother, which the very first use of it in this passage—"when brethren dwell together"—shows to be used here, as it constantly is elsewhere, in the wide sense of "kinsman," one of the same stock and tribal community (or "commune," as we should now say), into which it would be obviously inconvenient to allow a male stranger to be

brought "from without," as a sharer of the common inheritance, by marriage with the childless widow. The other critical word is "yabam," of which the etymology and primary meaning is untraceable, but which history enables us to understand as meaning one who stands in such relation to a childless widow as to give to her a *primâ-facie* claim to his conjugal protection, &c., and to him a corresponding claim to the first option whether he would accept her hand or the reproach of refusing her. The word itself has nothing whatever in it conveying the idea of a definite near kinship of any sort, and certainly not that of husband's brother. The whole passage literally rendered is as follows :—

"If brethren dwell together" [not otherwise] "and one die, and there is no child to him" [not otherwise], "the wife of the dead shall not be married without to a man that is a stranger." That is the primary and direct enactment: it is a prohibition, not a command. Then comes a provision for the inheritance of the dead. "Her yabam shall [or, may] go in unto her and take her to himself, and act as yabam to her; and it shall be that the first-born that she beareth shall succeed in the name of his brother [kinsman] which is dead. And if the man like not to take his yebêmeth [feminine correlative of yabam], then let his yebêmeth go up to the gate unto the elders and say, "My yabam refuseth to raise up unto his brother [kinsman] a name in Israel; he will not act as yabam' "—and so on with the same terms as before to the end of the passage.

It will be seen what a different impression this gives from that of the ordinary English version; how indefinite and more than doubtful the passage is in its bearing upon the question before us—in short, how impossible it really is to bring it to a point which will touch it.

The scope, too, of the Levirate obligation was also limited by the option evidently allowed (and taken by Orpah) to the widow, to marry without unto a stranger, if she abandoned her husband's inheritance.

2. The case of the "seven brethren," adduced by the Sadducees, who took all of them one woman in succession, has been urged as proving from our Lord's silence that he saw no breach of the Divine prohibition in it. But first supposing Him silent about it, this was in accordance with his custom of passing by all side issues and going direct to the point raised, which in this case was the Resurrection; and, secondly, what reason have we to imagine that the seven were all or any of them *own* brothers? The antecedent improbability is very great; and the word *adelphoi*, "brethren," in the Greek has precisely the same general meaning of *kinsmen* in that language that *ach* has in Hebrew. It has been suggested with great reason that the Sadducees were quoting the case, which would be well known to them, of Sarah in the book of Tobit, who *was* espoused to seven "brethren" in succession under the Levirate custom, every one of whom died childless (probably before their marriage was actually consummated). It is true that after some interval she found and claimed as her yabam an eighth husband in Tobias, and he certainly was *not* own brother to any of the seven; why, then, are we to assume that they were own brothers to each other? The fact that the Sadducees stopped short in their story at the seventh is explained by the fact that Tobias

did not die childless, and so would have spoiled their hypothetical example, which they were quite justified in quoting as they did.

It should be remembered that the Mishna expressly treats near kindred, *e.g.* real brothers, as not only exempt, but debarred, from the Levirate marriage. (Galloway.)

## (10) *On* "Abram's Relationship to Sarai"—*p.* 18.

The statement of Abram to Abimelech, "She is indeed my sister," for "she is the daughter of my father, but not the daughter of my mother," if taken in the wide meaning of the terms as commonly used by the Hebrews, would not necessarily mean that she was his own half-sister. For as they had but very scant means of expressing relationship, the primary terms father, son, brother, sister, &c., were used to include respectively, grandfather, grandson, cousin, or kinsman in general; and Abram's words would be true if he (even apart from the probability of his temptation to prevaricate in his fear) meant "she is my sister (cousin) the daughter (descendant) of my (grand) father, but not of my (grand) mother," for which last relationships there were no distinctive names. (See Mr. Galloway's pamphlet, page 38.)

And a reference to Genesis xi. 31, confirms the view that Sarai was not Terah's daughter, for in enumerating the members of his family who migrated with him from Uz, Abram is first named as his son, then Lot as his son's son, and then Sarai as "his daughter-in-law, his son Abram's wife," not as would be natural, after Abram and as "his daughter" if she had really been such. It must also be remembered that Isaac called Rebecca his sister, who was not even his first cousin. But perhaps as convincing a fact as any is this, that both Abram and Isaac were so accustomed to think and expect others like Pharaoh and Abimelech to think, that a blood-sister could not be a wife also, that to assert the one relationship seemed alone enough to exclude the possibility of the other. So that Abram's own words refute the very conclusion that the Promoters would draw from them, that marriage with a sister had in Abram's eyes nothing unlawful or impure, and so improbable, in it.

## (11) *On* "Herod and Herodias"—*p.* 18.

The denunciation by John the Baptist of the marriage of Herod and his brother Philip's wife, has been justly advanced as proving, not that the wife's sister is prohibited, which stands on other grounds, but that within the same degree marriage was incestuous. This, however, is often evaded by maintaining that, Philip being still alive, it was adultery, and not incest, for which Herod was rebuked by God's prophet. But no unbiassed reader could doubt for a moment that the words, "It is not lawful for thee to have thy brother's wife" must mean, what it always has been held to mean, that it was the sin of incest which had been committed. Let it, however, be admitted that Philip was alive, yet Herodias was certainly divorced from him; and if a brother's wife had been no otherwise forbidden than as some other man's wife, it could scarcely have been maintained, as a general proposition, that

after divorce it was, according to the Mosaic law, unlawful for Herod to marry her. But if the circumstance that Philip, from whom Herodias was divorced, was still alive should be thought to diminish the weight of the argument, the testimony of the Jewish historian, Josephus, here comes in to the same effect in a very striking manner, by another instance in which the brother was certainly deceased. The case now referred to is that of Archelaus and Glaphyra, and is thus stated by the historian (Antiq., book xvii. chap. 13): "Moreover, he" [Archelaus, son of Herod the Great] "transgressed the law of our fathers, and married Glaphyra, the daughter of Archelaus" [King of Cappadocia], "who had been the wife of his brother Alexander, which Alexander had three children by her; while it was *a thing detestable among the Jews to marry the brother's wife.*" Alexander had been put to death by his father some time before. (Quoted from Mr. Galloway's pamphlet on this subject.)

## (12) *On* "THE MISHNA"—*p.* 18.

The examples given in the Mishna of an illegal marriage of this kind are thus stated for the sake of brevity by Lord Hatherley.

"A, B, and C (three brothers) marry respectively M and N (two sisters) and S, a stranger. A dies, and C marries the widow M; then N dies, and also C, who leaves behind him S and M; then B may marry S, the stranger, *but not M, because she was sister to his former deceased wife N.*"

"A and B (two brothers) marry respectively M and N (two sisters). A and N die; then B, the survivor, cannot marry M, the survivor, *because she is the sister of one who was his former wife.*" "Brothers" here as elsewhere in the Mishna probably means "kinsmen." [For a very interesting discussion of this question the reader should consult the pamphlet by the Rev. W. B. Galloway. (Rivington.)]

## (13) *On* "JEWISH MORALS"—*p.* 19.

"So rife had the crime of [even] adultery become, that about this time, by advice of Rabbi Jochanan ben Zacchai, from Hosea iv. 14, the Sanhedrim abrogated the trial for it, as it failed unless the husband was himself blameless. [See Lightfoot's "Horæ Hebraicæ and Sermon," quoted from notes by F.M. in Sadler's Commentary on St. John, chapter viii.]

## (14) *On* "THE COUNCIL OF TRENT"—*p.* 26.

The canon of this Council, which was reluctantly and doubtfully framed under the influence of a desire to screen the unprecedented audacity of two recent Popes, Alexander VI. and Julius II., in granting dispensations within the Levitical degrees, runs thus:—"If any shall say that those degrees only of consanguinity and affinity which are set forth in Leviticus can hinder the contraction of marriage . . . . and that, of those, *some* cannot be dispensed by the Church . . . . let him be anathema." It must be noticed (1) that a clear distinction is drawn between the Scriptural and the merely ecclesiastical prohibition; and (2) that the dispensations which they.

were seeking to exculpate were "some" of the former. Now, these were in one instance, if not two, the case of a deceased wife's sister; in the other, the parallel case of a brother's widow; in the fourth, an aunt. Here, then, we have an unwilling, and so the more trustworthy witness, to the belief of those days among the best informed authorities that the *deceased wife's sister was forbidden by Divine law.*

## (15) *On* "KATHARINE OF ARAGON AND ANNE BOLEYN"—*p.* 25.

The marriageability of Katharine with Prince Henry really depended upon the fact, of which there appears to have been no doubt at the time, that she had never really been Prince Arthur's wife, their marriage having been celebrated but never consummated, Arthur being almost immediately called away to the war in Wales, in which he perished. Katharine was but a child of fifteen. But the cautious and wily King Henry VII., dealing as he was with another crafty prince in her father, and keeping his eye as usual anxiously upon the money question of her dower, was not satisfied to rest upon a formal declaration of the actual nullity or incompleteness of the former marriage, even in a papal bull, and insisted that this document should, besides this declaration of nullity, "make assurance doubly sure," and grant dispensation from the Levitical Law, and so make the second marriage valid even upon the supposition of the first having been completed. Katharine, it is well known, maintained to her death that it never had been.

It was a strange Nemesis that when Henry, now King, repudiated for Anne Boleyn, both the papal bull and Katharine, under pretence of conscientious regard for Divine law, his union with Anne was by that same law vitiated, as Cardinal Pole reminded him, in consequence of his previous illicit connection with her sister Mary; and that Anne in her turn was repudiated and divorced before her execution on the very same ground on which she had supplanted Katharine. (Dr. Lingard; and Friedmann's "Anne Boleyn.")

This fact, though for some time questioned, seems now put beyond doubt, if by nothing else, by the "extraordinary dispensation for which Henry applied" before his marriage with Anne, "which was not only to dissolve his marriage with Katharine, but also to remove any canonical impediments arising from affinity contracted *ex illicito coitu.*" This dispensation was, we know, never obtained. (Ch. Quarterly, vol. xix. p. 375, n.)

Thus Elizabeth's moral title as legitimate, which might be said to depend ostensibly, though not really, on the *maintenance* of the Divine prohibition of marriage with a brother's wife, depended really upon the *repudiation* of the prohibition of marriage, licit or illicit, with two sisters. Her legal title, however, which was all that she or her advisers cared much for, depended upon quite other questions—her father's will and Acts of Parliament. It is necessary to insist upon the above facts of history because the Promoters would make out that our present law owes its existence and maintenance to Elizabeth's anxiety about her right to the Crown—a very "unhistorical" assertion in every way.

## (16) *On* "Reckoning Degrees of Affinity"—*p.* 28.

It is important for the avoidance of misapprehension that readers should be aware that degrees of affinity and of collateral consanguinity were reckoned differently by canonists and civilians. The latter mode is that usually followed now, by which the steps are always reckoned, both up and down again, *through* the common parents or grand parents, not only *to* the source of each. The conspectus on pages 28, 29, will show the result of the usual method, but in reading the decrees of councils we shall find the other reckoning followed—*e.g.* first cousins are reckoned by us to be in the fourth degree, but by the other mode in the second. In our present discussion this has no effect on the arguments used, and indeed the habit of speaking of degrees at all in connection with it is of doubtful accuracy; the *principle* of affinity, shown on pages 27,28, provides its own limitations. But as a matter of fact, the Law in Leviticus does stop at a certain degree—the third of the usual reckoning; and this is rightly claimed as a "*limes Divino arbitrio impositus*," beyond which it is unnecessary to press the principle in practice or in argument.

## (17) *On* "Experience of other Nations"—*p.* 40.

"In countries where the proposed relaxation has been already allowed the surface is smooth enough to the eye, and morality and decency appear to be the rule; but the sacred and holy bond of matrimony is no longer what it has been and ought to be." (Dr. Temple.)——"Is domestic life in those countries holier, purer, happier than it is in this country? Here is what a German Doctor of Philosophy said who was asked his opinion about the state of the law of marriage in his country:—'It makes a German cover his face with his hands for shame.' Germans lament [this relaxation of the marriage law] and and have told me that all domestic relations are in consequence broken up. Uncles marry their nieces and brothers-in-law marry their sisters-in-law. The domestic relations being thus contracted, the orphan niece and wife's sister no longer find a home where so many do among us, where the law is against such unions. Such instances abroad will not, if we inquire into their moral effect upon society or religion, commend the like to us." (See Dr. Pusey's Evidence before the Royal Commissioners.)

"It is evident to those of us who are old enough to remember the state of things here [in America] previous to these innovations that a change for the worse has been brought about. * * * * * * * Since such increased nearness of connection [the marriage of brothers and sisters-in-law] has been deemed not improper and even desirable, there has grown up in families a perceptible and painful restraint . . . . . apprehension . . . . and jealousy; while familiarities which formerly were thought to be, and really were, innocent have come to possess a consciousness of evil tendency which itself is of the nature of sin." (An American clergyman's letter to Lord Hatherley.)——"As to the United States, there has been for many years among a considerable body of Churchmen a decided and growing repugnance

to such marriages ; a repugnance openly expressed, and not more general only because the question has been but little discussed. Where it has been discussed the antipathy to them has been enlarged and deepened. As a proof of this it is proposed that a declaration on the subject shall be adopted by both Houses of the General Convention, reaffirming one made by the Upper House in 1808." (Dr. Coleman, of Ohio.)——"I know, from letters and books sent me from America, how much many Americans deplore the state of their marriage law." (Bp. Harold Browne.)——"Such marriages [with a wife's sister] are of evil report almost everywhere." (Report of Committee of General Convention, New York, 1880.)

The experience of France after ten years, 1792—1802, of what the Promoters ask for, was such as to compel them, not merely to *restrain* the freedom granted for this union, as they did in the case of the niece, by requiring a civil dispensation, but absolutely to abolish it, at the instigation of the Second Consul, Cambacères, who repudiated the plea for the children as not genuine, attributing these unions to other much less respectable motives ; and asserting that, where divorce is permitted, the legalisation of them was an incentive to immorality between brothers and sisters-in-law, and to the disturbance of domestic peace. In this he was supported by the testimony of the Minister of Justice, who stated that in fact the license given in 1792 to marry the wife's sister had produced family troubles, and had been the origin of most of those demands for divorce of which the Courts were in actual possession.

The force of these foreign experiences is heightened when we recollect how much more we have to lose in the English home with its closer and freer intercourse and associations.

The later testimony of foreigners who do not notice nor feel such regret, proves, of course, nothing beyond this, that men of the present generation,—the third or fourth that has grown up under these defective family conditions,—know not, as we do, what they have lost.

# ANALYSIS OF THE LAW, EXPRESSED OR IMPLIED, IN LEVITICUS XVIII.

I.—*A Preamble*, verses 1—5, showing the motive and purpose of it.

II.—*The General Enactment*:—Verse 6, "None of you shall approach to any that is near of kin to him, *retegere nuditatem ejus*; I am the Lord."

III.—*Examples of its application*:—Verses 7—17, as follows:—

## 1. To Relatives by Birth (*Consanguinity*).

| | Explicitly named | | | Implied or inferred. |
|---|---|---|---|---|
| Verse 7. | "Thy [father or thy] mother" ..... | = | *Mother*..... | *Daughter* (also from verses 10, 17). |
| 9, 11. | "Thy sister" * ..... | = | *Sister*. | |
| 10. | "Thy son's daughter" ..... | = | *Granddaughter* ..... | *Grandmother*. |
| | "Thy daughter's daughter" ..... | | | |
| 12. | "Thy father's sister"..... | = | *Aunt* ..... | *Niece* (or verse 14). |
| 13. | "Thy mother's sister" ..... | | | |

* These two verses seem intended to include whole-sisters or half-sisters, by father or by mother, or by both, legitimate or illegitimate, older or younger than the man.

## 2. To Relatives by Marriage (*Affinity*).

| | Explicitly named | | | Implied or inferred. |
|---|---|---|---|---|
| Verse 8. | "Thy father's wife" | = | *Step-Mother* | *Step-Grandmother* / *Granddaughter-in-law* (with verse 10). |
| 14. | "Thy father's brother's wife" | = | *Aunt-in-law* (on father's side) | *Aunt-in-law* (mother's side). *Wife's Aunt* (either side). *Niece-in-law* (nephew's wife). *Step Niece* (wife's niece). |
| 15. | "Thy daughter-in-law" (son's wife) | = | *Daughter-in-law.* | |
| 16. | "Thy brother's wife" | = | *Sister-in-law* | *Sister-in-law* (wife's sister). |
| 17. | "A woman and Her daughter" | = | *Mother-in-law*, or *Step-Daughter* | *Grandmother-in-law.* |
| | "Her son's daughter" / "Her daughter's daughter" | = | *Step-Granddaughter.* | |

The above table is based upon Archdeacon Hessey's in No. III. of "Marriage Law Defence Union Papers," where the inferences are vindicated in detail, as also by Mr. Vincent in No. XVI.

IV.—*Another distinct Enactment*, verse 18, probably against polygamy, or some form of it.

"And a wife to her sister [*margin*, 'one wife to another'] thou shalt not take, to vex her [*or*, 'as a rival'] "*retegere nuditatem ejus* beside the other [*or*, 'upon her'] in her lifetime." [Hebr. "in her days."]

V.—*Other distinct Enactments*, verses 19, 20, 21, 22, and 23.

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* A LETTER TO THE BISHOP OF LICHFIELD ON LEGALIZING THE MARRIAGE WITH A DECEASED WIFE'S SISTER. By HENRY PHILLPOTTS, Bishop of Exeter. 1860. (Murray.)

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