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**God's
prohibition of
the marriage
with a
deceased ...**

**Edward Bouverie
Pusey**

BY THE SAME AUTHOR.

MARRIAGE with a **DECEASED WIFE'S SISTER** prohibited by Holy Scripture, as understood by the Church for 1500 years. Evidence given before Her Majesty's Commissioners. Together with a Speech delivered in the Court of Queen's Bench, by **E. BADELEY, Esq., M.A.,** Barrister-at-law. Price 3s. 6d.

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GOD'S PROHIBITION

OF

THE MARRIAGE WITH A DECEASED WIFE'S SISTER.

WRITERS, for and against the lawfulness of marriage with the deceased wife's sister, have often rested their case on the texts or text which favoured their belief, without taking much notice of that which seems to be, or is, opposed to it. Those who believe such marriages to be contrary to the Word of God, have insisted on the absoluteness of the solemn command, "None of you shall approach unto the whole flesh of your flesh ad retegendam nuditatem ejus, I am the Lord." Or they have argued, that, since in any moral law, what God forbids to the one sex, He forbids also to the other, God does really forbid the marriage with the deceased wife's sister, when He forbids the marriage with the deceased brother's wife. The one relation is as near as the other. On the other hand, those who maintain that the marriage with the deceased wife's sister is not forbidden by God's law, argue, that the wording of the prohibition of polygamy with two sisters virtually allowed to the Jews the marriage with two sisters, when it did not involve polygamy, and consequently, they infer again, the prohibition of this peculiar polygamy to the Jews is, in fact, a permission to Christians to marry the second, or third, or fourth sister, if so be, when the former sisters are dead. In a word, the one party rest their case on God's

express prohibition in Leviticus xviii. 6 and 16; the other rest theirs on the permission, implied, as they think, in Leviticus xviii. 18.

The principle, in either case, is, that, since God cannot contradict Himself, then, if He has clearly declared His mind in one place, any thing which may be alleged against it, even if it should seem at first sight plausible, cannot have any real weight.

Such paramount authority the Christian Church, of old, ascribed, I believe, to that plain prohibition in Leviticus xviii. 6. "None of you shall approach to the whole flesh of his flesh ad retegendam nuditatem ejus." It stands as one broad principle of Divine legislation, one all-comprehensive law, forbidding all carnal knowledge, whether under plea of marriage or out of marriage, of any who are near of kin. It stands as one great moral law, involving in itself the principle upon which it is founded, like those great moral laws of the Decalogue. It is a law of the same breadth and largeness and expansiveness, as, "Thou shalt not murder," "Thou shalt not commit adultery," "Thou shalt not steal." There is no ambiguity in the prohibition. One only question can be asked, "Who is my near of kin?" in analogy to that other question, "Who is my neighbour?" This question people have put in two ways:

1. Does the term, "near of kin," include those "near of kin by marriage," or only "those near of kin by blood?" The context itself decides the question. In itself "flesh of your flesh" *may* include the relations of the wife. The use of the word *sheēr* in this same context, and the context itself, determine that it *does*.

The two words *sheēr* and *basar* signify "flesh." They are used then of that which is to us as our own flesh. Yet with this difference, that in the word *sheēr* the metaphor seems to have been more lost, and its secondary meaning of "relation" appears to have become more its proper meaning. At least, it is used to express, in unimpassioned language, relationship, whereas when *basar* is so used, it is always used emphatically,

in reference to its original meaning. Thus, in the sayings, "he is our brother, our flesh¹," and in the idiom, "my bone and my flesh²," "thou art my bone and my flesh²," "I am your bone and your flesh²," the image still remains in its whole force. So again it is used, where there is no blood relationship at all, more than there is in the whole family of Adam, "that thou hide not thyself from thine own flesh³." Then again it is used of the wife herself. Adam, as taught by God, used the very word in regard to Eve, as being formed from himself, "This is flesh of my flesh" (*basar mibbesari*). God Himself employed the word in sanctioning marriage for the whole race of man. "Therefore shall a man leave his father and mother, and they shall be one *flesh*" (*basar echad*). This is just as much an idiomatic use of the word, as the other. The other, "he is our brother, our flesh," "my bone and my flesh," occurs in these two phrases only. The use of the idiom in regard to the wife, occurs in those two other phrases, which lie very near to the use of the word here, since the laws concern marriage. Since it could be said of Eve, "she is flesh of my flesh," since a man and his wife "become" by God's declaration "one flesh," since Eve was formed from Adam, that out of man (created after God's image and similitude) woman should take her beginning⁴, and God "knit them together" and "made them one," the words "flesh of my flesh" may as well signify the relations of a man's wife as his own. It is the very word used by God, to express the closeness of the union between the husband and his wife. It is used by God, as the common designation of both, "they shall become one flesh."

The word *sheer*, on the other hand, has become almost a proper term for "near of kin." In itself it seems to be used in a wide sense. It is used of the sister⁵, of the aunt⁶, but it is used also of a relation more distant than the uncle,

¹ Gen. xxxvii. 27.

² Gen. xxix. 14. Judg. ix. 2. 2 Sam. v. 1; xix. 13, 14. 1 Chron. xi. 1.

³ Isa. lviii. 7.

⁴ Gen. ii. 24.

⁵ Marriage Service.

⁶ Lev. xviii. 12, 13.

⁷ Lev. xx. 19.

both by itself⁸, and in the phrase which is used in Leviticus xviii. 6, "flesh of his flesh," which, in the only other place where it occurs⁹, is used of a relation, at least as distant as the first cousin. In an abstract form (*shaarah*) it is used in an undefined way. "Non reteges nuditatem of a woman and her daughter, neither shalt thou take her son's daughter or her daughter's daughter ad relegendam nuditatem ejus, for they are *shaarah*, near kindred." Here the daughter or granddaughter are not spoken of in special relation to the wife. But elsewhere, where it is intended to define that the word "relation" (*sheēr*) belongs to the person just named, this is expressed. It is said "his near relation" (*sheero*), "the near relation of —." Here, since the word stands undefined, and no special relation is expressed, it is just as probable that the daughter and granddaughter are spoken of in regard to the person addressed. "Thou shalt not take them—for they are near kindred," though they are such by being relations of the wife. But, in relation to whichever of the two, the husband or the wife, or both, the word *shaarah* is here used, this use is a most emphatic explanation of the general prohibition. That prohibition is worded, "None of you shall approach unto the whole *flesh* of his flesh," or (if you suppose the first word to have become a technical term) "to the whole *kin* of his flesh" (col *sheēr* besaro). A few verses afterwards, on this same subject, a man is forbidden this same thing in regard to certain relations of his wife, her daughter, or her son's daughter, or her daughter's daughter, on the ground that they are kindred (*shaarah*). The same act is forbidden; the ground upon which it is forbidden is expressed by the very same word; but the three persons, in regard to whom it is forbidden, are relations of the wife. It seems to me quite impossible, on this ground alone, to doubt that under the words "the whole kin of his flesh" (col *sheēr* besaro) the wife's relations are forbidden, when in the specific prohibitions

⁸ Num. xxvii. 11.

⁹ Lev. xxv. 49.

which follow, this same word *sheēr* is used, alike of the husband's relations, and the wife's, as the ground of the prohibition. "Non reteges nuditatem of thy father's sister; she is thy father's *sheēr*, near kinswoman." "Non reteges nuditatem of thy mother's sister; she is thy mother's *sheēr*, near kinswoman." "Non reteges nuditatem of a woman and her daughter; neither shalt thou take her son's daughter, nor her daughter's daughter ad retegendam nuditatem ejus; they are *shaarah*, near kindred. It is wickedness" or "pollution." When God, in giving the law, first forbids the whole class "near of kin" with the use of the word *sheēr*; and then uses this same word, first of two relations of the husband, and then of three relations of the wife, it seems to me to be a tampering with God's word in a way which no man would be allowed by human justice to do as to any human law, to deny that under that word, as first used, the relations of the wife are forbidden, seeing that certain relations of the wife are forbidden, a few verses afterwards, with use of this very word¹.

To this proof from the use of the word, the single instances, in which God emphatically and by name enforces His own law, correspond, and confirm it. These single instances are, both of affinity and consanguinity. The first is a case of the nearest blood, a man's own mother (whom, contrary to nature, Persians married); the second is a case of affinity, a step-mother. The prohibition of the step-mother, a case of affinity, takes precedence of the prohibition of a man's own sister. In this same chapter, there are (apart from the case of the wife's sister) as many cases of affinity forbidden, as of consanguinity. Of blood-relations, are forbidden, the mother, the sister, the half-sister, the son's daughter, the daughter's daughter, the father's sister, the mother's sister. Of near-of-

¹ Dr. M'Caul, on the ground of the instances given above, lays down that both *sheer* and *basar* separately signify "a relation by blood," and argues from Lev. xxv. 29, that they have that meaning when combined (p. 53-5). But this would be either tautology and unmeaning (the word blood-relation occurring twice), or the idiom would mean those of "rather distant kin," not "near of kin." For the relations of a man's relation are plainly further off from himself.

kin by marriage, are forbidden, the step-mother, the father's brother's wife, the daughter-in-law, sister-in-law, step-daughter, step-son's daughter, step-daughter's daughter. No one, unless he had a position to defend, could maintain, in the face of this, that that general prohibition, which stands at the head of all these, and to which they are subordinated, belongs only to blood-relations. Suppose this, which some contend to be its meaning, to be expressed. Suppose it to stand, "None of you shall marry any of your relations by blood." "No one shall marry his mother or his mother-in-law." Any one would at once feel the incongruity. And since there would be incongruity in this, and in the word of God there can be no incongruity, it is plain that such cannot be the meaning. The words "near of kin" must have that wider sense, a sense which in the context they have, and which, since a man and his wife are one flesh, is natural to them. They must have that wider sense, in which alone they comprehend all those cases, which God has arranged under them. Suppose that the tenth commandment had run, "Thou shalt not covet any thing which is thy neighbour's." And then suppose, that under that general law, the details, as to the house, the wife, the man-servant, the maid-servant, the ox, the ass, had been given, but it had been said, "thou shalt not covet the wife of any of the children of Israel," "thou shalt not covet the wife of the stranger who sojourneth among you," and so on, as to the rest which God forbade to be coveted, could any one have doubted as to the meaning of the word "neighbour?" Could any pretend that it did not include "the stranger" as well as the Israelite? As little may one doubt, that the general title "near of kin," under which God has ranged those specific prohibitions of women near of kin, alike by marriage and by blood, includes all within that degree of kindred, whether by marriage or by blood. No one would doubt this in the case of human law. It is tampering with Divine truth to question it in the law Divine.

2. But a second question is raised, "Who is near of kin?" and, this time, not whether "flesh of your flesh" includes the

wife's relations, but as to the number of both, whether of the husband's or wife's relations, who are included. It is said, "God has Himself, in that same chapter, instanced the specific cases which He willed to prohibit. We may not make the general prohibition extend beyond the sum of the particular prohibitions, in which the Lawgiver Himself has applied His own rule." First, be it observed, that this answer is inconsistent with the other. Let any one choose which objection he thinks to hold good, and abide by it. But let not any one, as he loves or reverences the law or truth of God, urge first the one, then the other. To urge objections, inconsistent with each other, shows that a person's object is, not to ascertain the truth, but to get rid of that, against which he urges them. The first objection implied, that the prohibition, "None of you shall approach to any near of kin to him," &c., was a command only partially connected with the prohibitions which follow. For whereas these specific prohibitions forbid, equally and alike and in the same terms, all approach to those near of kin, whether by blood or marriage, the objection was, that the general prohibition, "None of you shall approach," &c., applied to nearness by blood only. This second objection, in that it pleads that the specific prohibitions collectively are co-extensive with the general prohibition, assumes that that general prohibition comprehends both cases, those of nearness by blood, and those of nearness by marriage. A whole is equal to its parts. If the parts or details of the Divine law on marriage with those near of kin, are to be equal to the whole, the general prohibition, then, since the parts relate to cases of nearness, both by blood and marriage, so must the whole, the general prohibition. Whoever then urges this argument, does, in fact, abandon the other.

It is of much moment to bear this well in mind, not as to this case only, but in all other questions of Divine truth. For whenever the human mind has a strong repugnance to submit its reason, or to yield its obedience, to the revealed mind of God, its common resource is, to take up objections, it matters

not whence, to urge one, until it is answered, then to take up another, and when that is answered, to recur to the first, carrying on a sort of desultory warfare, urging objections which really answer one another, each conceding a portion of the truth, each denying what the other concedes, hiding the truth from itself by the dust which it raises, and holding that the truth is invalidated, simply because objections can be raised against it.

Of these two objections, the first concedes truly (although on a faulty supposition) that the particular prohibitions are not co-extensive with the general prohibition; the second concedes truly, that that general prohibition includes cases in which the nearness is by marriage only. This is absolutely essential to its argument. It sees rightly the relation of the fundamental law to the details which follow; only it contends that God subsequently inculcated specifically in this same chapter all which He meant to prohibit under that general law.

Now, scarcely any of those who, in England, employ this argument, can have considered what it would lead to. First, not to urge that, if the instances which follow in the same chapter were meant to embrace the whole of the prohibited degrees, the daughter must have been mentioned as well as the mother, who in England would contend, that marriage with a grandfather's young widow would not be something abhorrent? Yet, if (the case is not so uncommon, and in a neighbouring country such "mariages de convenance" have been familiarly spoken of,) a person between sixty and seventy were to marry a young wife, she might well not be older than his grandson. We see, from time to time, in the papers, cases of such notable disparity of years in persons married. We hear of the hopes of "presumptive heirs" being disappointed through them. They were not then merely nominal marriages. Many temptations of interest might lead to marriage with such a grandfather's widow. Such marriage is more probable than marriage with a granddaughter, which yet is expressly prohibited. Again, no one will readily sup-

pose, that, when God prohibited the aunt-in-law on the father's side, He meant to allow the aunt-in-law on the mother's. Few Englishmen would think, that when God prohibits to Christians marriage with an aunt, He allows to them marriage with a niece. Yet the marriage with the niece is only forbidden by the general prohibition of marriage with all near of kin. To this last instance, and the last only, as to marriage with the niece, men have the answer ready, "but this is a case of consanguinity." And, therefore, on their own principles, the argument is the stronger. The question now is not as to the inherent unfitness of any given marriage, but whether God prohibited by name, all which are inherently unfit, all which He willed to include under the general prohibition. The objection, "the marriage with the niece is a case of blood," virtually concedes, that such marriages are unfit. Then, on such persons' own showing, all the cases of unfitness are not specifically prohibited. And if so, it cannot be maintained that a case is not prohibited by the general law, because it is not specifically prohibited. To any person of simple understanding, the single case, that the father's-brother's-wife is prohibited, and the mother's-brother's-wife is not prohibited, would be decisive of the whole question.

On what ground it pleased God to enforce specifically certain cases, and not by name to enforce others which still remain forbidden under the general prohibition, we cannot say. It may be, that there was some special temptation to those sins which He forbade by name. Certainly sins are specifically forbidden to which we should have thought there would be no temptation, that with a man's own mother. S. Basil points out this:—"The legislator does not appear to embrace every species of offences, but especially to interdict those of the Egyptians from whom Israel had gone forth, and those of the Canaanites among whom they had come. For thus the passage is: 'After the doings of the land of Egypt, wherein ye dwelt, shall ye not do; and after the doings of the land of Canaan, whither I bring you, shall ye not do, neither shall

ye walk in their ordinances.' So that it is probable that this species of crime [the marriage with the wife's sister] was not at that time one that found place among the Gentiles ; so that on that account the lawgiver had no occasion to make provision against it, but considered the untaught custom of itself sufficient to convict that abomination²" (or, rather, that it was already sufficiently prohibited under the general law).

Again, a yet broader application of the principle of the prohibition, "None of you shall approach," &c., is contained in Amos ii. 7, where a defilement of a different sort, not prohibited in express terms in the law, nor any where else in the Old Testament, except on the principle of this verse, is rebuked in God's Name, as a wilful pollution of His Holy Name, as sin with a high hand, which men must have known to be offensive to God.

But then, since it must be conceded, that the prohibition "None of you shall approach unto any near of kin," &c., applies to nearness by marriage, and that all such cases of nearness are not specifically prohibited, can any one venture to say that the wife's sister is not near of kin, while the brother's wife is prohibited, because she is near of kin? Observe that "near of kin by affinity" means, that one is "near by blood" to *her* with whom a man has by marriage become one flesh. It is one principle, whether the individual "near of kin by affinity" be the wife's mother, or her daughter or her sister. The nearness in all cases is to *her*, and, through her, to her husband. Now it is the very argument of those who urge these marriages, that the wife's sister is "near of kin by affinity." It is said (and it is the main argument for these marriages), that she will have an interest in her deceased sister's children, who, being her nephews and nieces, become, by marriage, her step-sons and step-daughters also. In other words, they urge these marriages on the very ground

² Ep. 160 ad Diodor. 3, translated in my Letter on proposed change in the laws prohibiting marriage between those near of kin, App. p. 18, and in Mr. Palmer's statement as to the marriage law in the Greek Church printed in the Evidence before H. M. Commissioners.

upon which the word of God forbids them, the nearness of kin. For all nearness by affinity rests on one and the same principle. If the wife's sister is not near of kin, neither is her mother or her daughter. The whole relation is through *her*. If there is nothing abhorrent in the marriage of the sister of the wife, why should there be in the marriage with her mother or her daughter? All are related to the husband through her, and through her alone. Why should it not be said, "Who could take so much interest in the well-being of the deceased wife's children, as her own daughter? They are her own half-sisters. She will be an elder sister and a mother to them." The idea of an elder sister giving a mother's care to the youngest in a large bereaved family, is one with which we are familiar. But the law of God forbids that this should be through the marriage of the deceased wife's daughter. God's law is wiser than man's relaxations of it. He would not have such protection (if it were so) to the children, purchased through the confusion of relationship. All would *now* feel the marriage with the mother-in-law or the step-daughter to be unnatural. But why? Because, in despite of their theories, people feel that the wife's mother is a sort of mother to the husband; that her daughter, if she have one, is a sort of daughter. In these cases, they feel that to enter into marriage would be to do violence to the relation which before existed, that it would be a sort of sacrilege for one who had been, through the wife, in the relation of daughter or mother, to become the wife of him, to whom she had been as a daughter or a mother. But since this is unnatural, then it is also unnatural that she who had been, and is, as a sister, should also be the wife. Since the word, "near of kin" (as is plain from the instances given in Lev. xviii.), includes those who are "near of kin" through the wife, not by blood, then it is equally plain that it includes the wife's sister. "Near of kin" includes, it is plain, the wife's near relations. For, in God's word, it includes her mother or her daughter. Then it includes the sister too, unless any will contend that the sister is not her sister's near relation. It includes all or

none. The question is not as to men's varying sentiments or instincts, but as to God's law. Either the word prohibits all the wife's *near* relations, or it prohibits none. But it clearly prohibits some. Therefore it prohibits all.

The argument which enforces the prohibition of marriage of the wife's sister by parity of reasoning from the prohibition of the marriage with the brother's widow is, I doubt not, valid, but it is not needed. For it appears from Holy Scripture itself, that the *near* relations of the wife are included in the general prohibition, "None of you shall approach," &c., and, this being so, human reason of itself confesses, that the wife's sister is *near*³.

There have been, indeed, those who treat the whole question of nearness by affinity, as sentimentalism, or as beautiful but untrue feeling. It has been said, "If the wife's relations become akin to the husband, by reason of the oneness between her and her husband, then the wives of her male relations also become akin to him, by reason of their oneness with their husbands." "The fallacy of the argument," it has been said recently⁴, "has already been pointed out by others, by showing how many marriages now allowed by the Church and civil law of England would thus become incestuous and

³ I do not see the bearing of Dr. M'Caul's argument, that since the human race, out of Christ, acquire no relation to Christ, who vouchsafes to call Himself the Husband of the Body, therefore the earthly wife's kindred remain, notwithstanding her union with a husband, as remote from kindred with her husband as they were before (p. 38). Christ already stands in a relation to the whole human race, because He died for all, and redeemed all. No nearer or fresher relation can there be, unless men one by one accept that redemption, and become members of Him, united with Him. Besides, such analogies ought not to be extended beyond the object for which Scripture gives them to us. It expresses the exceeding condescension of our Lord's love and union with the Church and with the single soul, under the image of a marriage; but we are not entitled to follow out the analogy as to those out of Christ. The fallacy of the argument lies in the application of a spiritual image to natural relations, beyond what Holy Scripture employs them for. According to the same analogy it might be said, the children of the wife are the children of the husband. The spiritual children of the Church are the spiritual children of Christ; those born by nature to Christian parents are not born members of Christ.

⁴ Dr. M'Caul, p. 36.

unlawful." To this it is enough to answer; God has recognized the one principle, the nearness of kin of the wife's own relations, in that He has prohibited marriage with certain near relations of the wife, her mother and daughter, and her son's or her daughter's daughter. He has not recognized the other principle, in that He has not laid down any rule which bears upon it. It may have been, that such cases of double widowhood, while both parties are marriageable, are so unlikely, that God did not judge it necessary to lay down any law upon it. A marriage with a deceased wife's step-mother, would, I should think, appear to most to be something unbecoming. Still God has not laid down any law which should make such a marriage direct disobedience to His will. He has forbidden the husband or the wife to marry the near relations of each other, or their own. He has limited His prohibition to these two classes. And so the Church generally, when laying down what was forbidden by the Divine law, and the Church of England, in prohibiting marriages prohibited by that law, has left such questions unheeded. Apparently, human nature has little temptation to such marriages, since, although unforbidden, we do not hear of them.

A more limited question has also been lately raised. It has been argued, "that since, according to the Mosaic law, the wife passed into the husband's family, acquired the civil rights of his family, and, if a priest's daughter, lost the privileges which she had had as such, therefore it follows, that the husband's relations become the wife's relations, but her relations do not become his relations⁵." And so he is to be allowed to marry her sister, while she is forbidden to marry his brother. But this is to confound the law of nature with the political or the ceremonial law. Since God was pleased to give to man the pre-eminence, the wife is incorporated into the husband's family. But in the personal relation of the husband and wife, the connexion is mutual. Human nature

⁵ Dr. M'Caul, *ib.*

acknowledges it. Holy Scripture recognizes it. It records the deference which Moses showed to his father-in-law, in asking permission to return to Egypt⁶, and the "obeisance⁷," which, when placed by God at the head of His whole people, he "made" to his father-in-law, when he came to meet him. God directed the same solemn curse to be pronounced from Mount Ebal against him who sinned with his wife's mother⁸, as against him who sinned with his father's wife or with his own sister. Then the sin (whether in marriage or out of it) with the step-daughter, or the step-granddaughter⁹, is as much forbidden, as with the daughter-in-law.

The prohibition¹ was complete and absolute², including those near by marriage, as well as by blood. In itself, it might have been thought to have included more than are actually forbidden by it. For in the other place where the words "flesh of his flesh" occur³, they extend beyond the uncle. And so while, on whatever ground, God has enforced some prohibitions specifically and by name, He, at the same time, in order to lay no burden too grievous to be borne, defined by the instances mentioned, the principle of what He meant by nearness. Else, "nearness of kin" could hardly have been understood not to have included the children of brothers and sisters. Certainly, its limits could not be contracted, without giving up the idea of nearness of kin altogether.

⁶ Exod. iv. 18.

⁷ Exod. xviii. 7.

⁸ Deut. xxvii. 23.

⁹ Lev. xviii. 27.

¹ Lev. xviii. 6.

² Dr. M'Caul, p. 52, says, "To know who they are who are the 'near kin' in verse 6, the following verses must first be consulted, and therefore verse 6 by itself proves nothing, and therefore the inference drawn by S. Basil [Dr. M'Caul might have added, by S. Ambrose, S. Augustine, S. Gregory the Great and others] and Dr. P. from the words of verse 6 independently of the following verses, has not even the merit of plausibility." But, 1. verse 6 is abundantly clear, independent of all the following instances, through the use of *shaarah* in verse 17. The use of the term of Holy Scripture in verse 17 explains its use in verse 6. This is a mere fact of language. 2. The mention of cases of affinity as well as consanguinity is also independent of the details. Both these facts show that in verse 6 "near affinity" is prohibited; and there can be no question but that a sister-in-law is near affinity.

³ Lev. xxv. 49.

These principles, as to the degrees of marriage forbidden by God as part of the moral law, recur in the Gospel also. There was no occasion for their re-enactment, since, as being part of the moral law of God, they last as long as that to which they relate shall last, until the time come, when there shall be neither marrying nor giving in marriage, but man shall be like the angels of God in heaven. But, in God's Providence, just that part of the moral law of marriage has been confirmed in the Gospel, about which men now dispute. Two cases of incestuous marriage have been condemned by name in the New Testament, and these were cases of affinity, marriage with the brother's widow and the father's widow. If marriages of near affinity were not hateful to God, St. John Baptist rebuked Herod, not for vice, but for innocency (for Herodias' husband was dead⁴). Then also St. Paul would have been wrong in condemning, as "fornication not known among the Gentiles," the act of the incestuous Corinthian who married the widow of his father. But since this is impossible, then the Gospel has fixed and authenticated the meaning of God's prohibition, "None of you shall approach unto the whole flesh of his flesh," &c.; then He has specifically forbidden the marriage with the brother's widow, which, in one case and for reasons belonging to the Jewish dispensation, He had allowed of old. This were enough for disciples of the Apostles.

But, further, it has been conceded and even advocated as probable⁵, that, when the Apostles, in their decree at the Council of Jerusalem, enjoined on the Gentiles, as the last of the four "necessary things" from which they commanded them to abstain, abstinence from *πορνεία*, they mean to forbid them "unlawful concubitage," i. e. such concubitage, as being lawful by the Gentile law, was unlawful by the law, as given by God to the Jews. What was forbidden under the Apostolic term was "incestuous marriage," marriage which, being for-

⁴ See the evidence for this from Josephus in the speech of the Bishop of Exeter before the House of Lords, Feb. 25, 1851, p. 20, and note pp. 37—39.

⁵ Dr. M'Caul, p. 3, 4.

bidden by the law of God, was not marriage, but "fornication." But they for whom the Apostles were legislating, were living under the Roman law. Now all the incests forbidden by God's revealed law, except three or four at most, were forbidden also by the Roman law⁶. These three or four, which the Roman law allowed, but which were forbidden by God, were the marriage with the deceased brother's wife, the deceased wife's sister, and perhaps the niece by blood as well as by marriage. The Roman law was to them as a law of nature. Four years before the Apostolic decree, A.D. 52 (i. e. A.D. 48), the Senate at Rome had, to please the Emperor Claudius, passed a decree, legalizing for the future the marriage of the uncle with his niece. The whole history of the transaction shows, how alien from the minds of the Romans that incest was. The weak Emperor had been seduced by his niece Agrippina, and the incest was notorious. "But as yet," says Tacitus⁷, "they did not venture to solemnize the marriage, there being no precedent of a brother's daughter being brought as a bride into her uncle's house. Fears were entertained, lest the incest, if despised, should burst out into some public calamity [i. e. being avenged by the gods]. Yet the delay was not given up, until Vitellius undertook the thing to be perpetrated by his wiles." Vitellius, by an artful speech, smoothed the way for the degraded and complaisant senate to comply with the Emperor's wishes. A mob also was gained. The decree was passed. "And yet," adds Tacitus¹, "one only was found to wish for such a marriage,—a Roman knight, whom most alleged to have been actuated by the wish to please Agrippina." Suetonius adds another case of a freedman². Another incident, at the same time, illustrates the Roman feeling. In connexion with this intrigue, a charge of incest had been got up against a brother and sister. The brother committed suicide on the day of the Emperor's marriage, the sister was banished. "Claudius," Tacitus relates³, "added that, according to the

⁶ See in Evidence 445, p. 13, note d, ed. 8vo.

¹ Ib. 7.

² Claud. 26.

⁷ Ann. xii. 5.

³ Ib. 8.

laws of king Tullus, expiatory sacrifices were to be offered by the priests at the grove of Diana, amid the universal ridicule, that offerings to avert the punishment of incest should be looked out, *at such a time*," i. e. when this incestuous marriage with a niece was publicly solemnized. When, in a degraded capital, court-favour could hardly find an imitator or two of such an incest, when the incestuous marriage of the uncle and niece was held so akin to that between brother and sister, it will not be readily supposed that any nearer incest had to be prohibited. And when the Empire became Christian, no nearer incests had to be forbidden in the whole Roman Empire. St. Paul also speaks of the incestuous marriage with the father's widow, under the same term as that used by the Apostles at Jerusalem, as *πορνεία* not even known among the heathen.

The Apostolic decree needed then to provide at most only against three or four cases of incestuous marriage, into which, from having known no other law, the converts from heathenism might have been likely to fall. For the question in the Council of Jerusalem, was not about things openly and manifestly unlawful, but about things, as to which the converts from among the heathen, having no positive law, might reasonably entertain a doubt. On the other hand, the fact that the Apostles use the general word *πορνεία*, instead of specifying the unions which they forbade under that name, implies that they had to forbid more than the single case of the niece, even if they had to forbid this. They forbade a class. But beyond the marriage with the niece (which, it is to be remembered, is not forbidden by name in the Old Testament) the two nearest incests which they had to forbid, as being likely to be practised by those whom they thus commanded to abstain, were those with the deceased brother's wife, and the deceased wife's sister. The marriage with the deceased wife's sister was then an union, which one must believe to have been forbidden by the Apostles.

With this agrees the testimony given by the legislation of the first Christian emperors and that of S. Basil.

The change in the civil law of marriage, almost immediately after the Empire became Christian, could have had no other ground than that the emperors adopted and gave a civil sanction to the laws of the Church. The emperors gave a civil sanction to the Christian laws of marriage, as they did to the Christian festivals. The legislation rested on the same principle. Fourteen years after the Council of Nice, and eighteen years after Constantine's first Christian law, he repealed the law of Claudius, passing a law which annexed the penalty of death to the marriage of the uncle and niece, A. D. 339. Sixteen years later, A. D. 355, under Constantius and Constans, was the law, in which, acknowledging that "the ancients (i. e. the old Romans) believed that it was allowable, after the marriage of a brother was come to an end, that his brother should marry his wife, and that it was also allowable, after the death or divorce of a woman, to contract marriage with the sister of the same," it is enacted, "Let all abstain from marriages of this sort, nor let them think that legitimate children can be begotten from such unions, for that they who shall be born are spurious⁴." The prohibition of these marriages throughout the Roman Empire implies that they were actually disallowed by the Church of Christ, whose example the emperors followed, in the empire of which they were sovereigns, i. e. the whole Roman world.

The evidence of S. Basil relates not to the present only, but to the past. Every one knows how sacred the marriage-bond was held in the ancient Church. But S. Basil's evidence goes to this, that such marriages, when any ventured to contract them, were not only held to have been no marriages, but both parties were shut out from communion, until they should separate. S. Basil's words are explicit. He says, "The practice has been, if any one at any time, overcome by an unclean passion, falls off into an unhallowed (*ἄθεσμον*) union with two sisters, that this be not accounted marriage, nor that they be received at all into the congregation of the Church, before they be parted from one another⁵."

⁴ See Evidence, p. 12, 13.

⁵ Ep. 160, § 2.

This practice, S. Basil says, was hereditary and of the greatest weight. "First of all," he says, "we have to allege that which is of the greatest weight in these matters, the practice (ἔθος) among us, which has the power of a law, because these sacred laws (θεσμοὶς) have been delivered down to us by holy men." It has been answered⁶, "S. Basil is probably speaking of his own diocese." This is utterly inconceivable. A *local* custom, not only forbidding but dissolving marriage, and excommunicating until the marriage should be abandoned, is utterly at variance with the principles of the ancient Church. Local customs there were, but not in matters of this grave character. No local custom could have this binding force. Those customs alone had binding force, which the whole Church every where inherited from the Apostles. Such customs were binding upon each, because they were binding upon all. Such *customs* S. Basil elsewhere refers to, which, prevailing every where, had no human or assignable origin; no date of their introduction could be discovered; they were part of the common, unwritten law or practice of the Church. No "dark ages" had then intervened, in which their history could be lost. If they had had a beginning, short of the Apostles, that beginning must have been known. They must have had a history; they must have spread from one part of the Church to another, and this their known origin would have attested their novelty. When those customs were not attested by Holy Scripture, they were not essential to the faith. For Holy Scripture contained the whole faith. But when they related to what was contained in Holy Scripture, then, since these traditions were of Apostolic origin, they gave Apostolic sanction to that meaning of Holy Scripture which they attested. So even Eusebius appealed to the faith which he had received. "⁷ As we have received from the Bishops who preceded us, and in our first catechisings, and when we received the Holy Laver, and as we have learned from the Divine

⁶ See in my Evidence, Pref., p. xlix—li. Dr. M'Caul, p. 49.

⁷ Nic. Def. § 5.

Scriptures, and as we believed and taught in the Presbytery, and in the Episcopate itself, so believing also at the time present, we report to you our faith." In like way, not to mention individual fathers, the Council of Nice confessed the faith. "About the faith they wrote not, 'it seemed good,' observes S. Athanasius⁸, but 'Thus believes the Catholic Church,' and thereupon they confessed how the faith lay, in order to show that their sentiments were not novel but Apostolical, and what they wrote down was no discovery of theirs, but is the same as was taught by the Apostles."

The Council of Nice itself uses the words "customs," "wont," of the ancient traditional customs of the Church. "' Let the ancient *customs* (ἔθνη) in Egypt and Libya and Pentapolis hold, that the Bishop of Alexandria should have authority over these, since this is *customary* (σύννητες) with the Bishop of Rome also," &c. "' Since the *custom* (συνήθεια) and *ancient tradition* has prevailed, that the Bishop of Ælia [Jerusalem] be honoured," &c. "' It hath come to the holy and great synod, that in some places and cities the deacons give the Eucharist to the presbyters, which neither the Canon, nor *the custom hath transmitted*," &c. (ἡ συνήθεια παρίδωκε), which is just S. Basil's language.

This reference of S. Basil to custom, and that, transmitted custom among Christians, is of the more weight, because elsewhere, where he speaks of the transmitted customs of the Church, he speaks of them as Apostolic. "' Of those doctrines and preachings which are preserved in the Church, some we have from the written teaching, some we have received in mystery, having been transmitted through to us (διαδοθέντα ἡμῖν) from the tradition of the Apostles; both of which have the same power unto godliness. And this no one will contradict, who has ever so little experience of the sacred laws (θεσμῶν) of the Church. For if we were to venture to decline the unwritten customs (τὰ ἀγραφα τῶν ἐθῶν) as if they had not great force, we should unawares

⁸ Counc. Arim. and Seleuc. § 6.

¹ Can. vii.

² Can. xviii.

⁹ Can. vi.

³ De Spir. S. c. 27.

injure the Gospel in its essentials, or rather we should reduce the preaching to a bare name."

The impugnors of the Godhead of God the Holy Ghost had disputed the practice of the Church, to ascribe "glory to Him *with* the Father and the Son." S. Basil in his book "on the Holy Ghost" maintains the doctrine out of Holy Scripture (as he does here the unlawfulness of the incest with the wife's sister), but he maintains it also out of custom, i. e. Apostolic custom. He first uses the same argument as to the doxology, in regard to God the Son. "All who, from stability of character, have preferred the majesty of antiquity to new fashions, and have preserved unchanged the tradition of the fathers, in city and in the country, use this word [*with*, not *through*]. But they who take disgust at things *accustomed* (τῶν συνήθων) and who rise up against what is old as antiquated, these are they who receive novelties," &c. And in justifying the unwritten doxology to the Father with the Son and Holy Ghost by the equally unwritten confession of faith in the Father and the Son and the Holy Ghost in Baptism, he says, "If they decline the form of the doxology, as unwritten, let them give us the written proofs of the confession of the faith, and the other things which we have enumerated. Then, since there are so many things unwritten, which have such force in regard to the mystery of godliness, will they not allow us one expression *coming to us from the fathers*, which we find, through unartificial custom (συνήθειας), abiding in those Churches which are unperverted, which (custom) is of no slight account, and contributes not slightly to the power of the mystery?" (the confession of the Trinity being essential to Baptism.) Once more, at the beginning of the chapter in which he cites the earlier fathers, who in the doxology used the word "*with* the Holy Ghost," he refers to St. Paul's words⁴, "Hold fast the traditions which ye have received, either by word, or by epistle," "of which," he adds, "this present also is one, which they who from the beginning

⁴ C. 7.⁵ C. 27, § 67.⁶ C. 29, § 71.

arranged it [the doxology], delivering to those after them, the use ever continuing on as time too went on, rooted through long custom (διὰ μακρᾶς τῆς συνηθείας) in the Churches;" and of himself he says, "It hath not its origin from us. How should it? we being in truth of yesterday, as Job saith, in comparison with that long time, the contemporary of this custom" (τὸν τῆς συνηθείας ταύτης ἡλικιώτην), and in regard to Origen's language he says, "so did the strength of tradition often impel men to contradict their own dogmas⁷."

The similarity of the general argument, the appeal to the force of this unwritten custom, in combination with the appeal to Holy Scripture, the force which he speaks of its exercising, as rooted in the Church, the recurrence of the characteristic words "custom," "sacred laws," "tradition" (ἔθῶν or συνηθείας, θεσμῶν, παραδόσεως), are in themselves a strong presumption, that in regard to the marriage of the deceased wife's sister also, the traditionary custom which he urged as of primary weight was one which the Church believed to have come from the Apostles.

An appeal of this sort to the universal and traditional custom of the Church, would have had weight against Diodorus; the practice of S. Basil's own diocese would have had none. Diodorus was in no way bound by the custom of S. Basil's diocese. S. Basil writes to him as an equal, whom he wishes to unite with him, "that we may join our forces against that spurious document" (the Epistle, attributed to Diodorus, allowing of such a marriage). This offence had not arisen in S. Basil's diocese. S. Basil had not been asked to admit the custom into his own diocese. The subject of his own diocese would have been altogether irrelevant. The case, as to the lawfulness of such a marriage, had been put to Diodorus by some one who wished to contract it. Diodorus instead of reprobating it (or as S. Basil charitably supposes, some one personating him) had argued in its defence. The letter in which he had defended it was brought

⁷ § 73.

to S. Basil, and the person who brought it boasted of the authority of Diodorus, as a set-off against the judgment of S. Basil. S. Basil, with the forethought for the well-being of the Church which characterized that great man, wrote at once to Diodorus to induce him to withdraw his sanction. The case was as yet an insulated sin. S. Basil ends by the prayer that "this our exhortation may prove more strong than the passion, or at all events that this pollution may not spread to my diocese, but may be confined to those places where it has been dared." Had the question related to S. Basil's diocese, it might have been an answer to say, "the hereditary practice in my diocese has always been, not to regard such incests as marriage, but to excommunicate those who contract them, until they separate, therefore I shall not change the custom of my predecessors." The tradition of S. Basil's diocese would have had force for S. Basil's diocese. But it would, in itself, have no weight, as a rule for other dioceses. What was one diocese to the whole Church? S. Basil was not one who would think that the whole Church was to adopt the practice of his single diocese, had it been indeed single.

But S. Basil's argument, in its natural meaning, is both Scriptural and of weight. It is Scriptural, for he uses the word and argument of St. Paul, "If any man seem to be contentious, we have no such *custom* (ἔθος), neither the Churches of God." S. Basil uses it, as a *prima facie*, and in itself a sufficient argument. For the first time apparently in the Christian Church, the permissibility of these marriages had been argued on the ground of an inference from a passage in which God limited polygamy among the Jews. Against this novel interpretation of Holy Scripture S. Basil sets in the first place, the Christian custom. Now, in all tradition, it is of first moment, that they who hand it down should be trustworthy. On this then S. Basil lays stress, "because the sacred laws were handed down to us by holy men."

Now, 1, this argument which, S. Basil says, "is of the greatest

weight in such matters," could have had no weight at all, had he been speaking of a custom of his own Province only (*τὸ παρ' ἡμῶν ἔθος*). 2. He speaks of "the author of this letter" as "introducing *into society* so great an evil." A custom which he could be charged with "*introducing into society*" (and S. Basil does not use his words lightly) could not have prevailed in society before. 3. A local custom, dissolving marriage, is alien from the practice of the early Church. 4. A local custom or tradition could not confer the sanction of a "sacred law" (*θεσμός*), or make the opposite act *ἄθεσμος*, "a lawless profanation." (Remember the use of the words *ἀθεσμία*, *ἀθεσμόλεκτρος*, of profane and incestuous unions.) S. Basil never would have applied such terms as he uses in regard to this incest, on his own single authority. "The lascivious passion" (*ἀσελγής*, the Scriptural term for offences against the 7th commandment to which it gives no definite name), "unclean passion," "a thing to be shuddered at," "unhallowed (*ἄθεσμον*) union," "passion," "this kind of sin," "abomination" (*μύσους*), "lasciviousness" again, "disgraceful passion," "pollution" (*ἄγος*). 5. S. Basil's appeal to traditional custom, meaning thereby a custom of the whole Church, is the same argument which he employs elsewhere, using the same word of Holy Scripture, *ἔθος*. 6. Some thirty years before this, viz. A.D. 355 (S. Basil's Episcopate began A.D. 370, closed A.D. 378), the Roman Emperors Constantius and Constans had given a civil sanction to the practice of the Church forbidding these marriages. Surely no one can think that S. Basil would argue from a local custom, when that custom was universal. The imperial decree illustrates the words of S. Basil, "the custom among us," i. e. in the Christian Church; the statement of S. Basil shows that the custom which the emperors sanctioned was not the custom of that time only, but had been handed down by holy men from of old.

This practice attested by S. Basil, as understood in its natural sense, and the Apostolic decree correspond with each other, as cause and effect. The Apostolic command forbidding

to converts from among the heathen marriage forbidden by the principles of the Levitical law, would involve such a practice as we find in S. Basil. The practice of which S. Basil speaks requires and implies Apostolic authority. We know from S. Basil the stringency of the prohibition; we know that it was derived from tradition; we have no fountain of that tradition short of the Apostles; and we have from the Apostles a prohibition co-extensive with the prohibitions of the law of Moses. The two accounts agree, if we believe the Apostles to have interpreted the prohibition of God in that law, as (with the exception of that one Diodorus) it has been understood by the Church of Christ, wherever we have any record of its way of understanding that law.

Hence the absence of early Canons on the subject. There was no need of Canons of the Church when there was a Divine law. The Apostolic (or Ante-Nicene) Canon on the subject, excludes from the Clergy any one who ever (it does not say whether as a heathen or a Christian) contracted such a marriage. It was a note of infamy which, like other offences, precluded one who had contracted it from ever being admitted into Holy Orders⁸. The neighbouring Canons, before and after⁹, relate to acts which excluded from Holy Orders. The legislation related not to marriage, but to those things which either precluded ordination or involved the deposition of those ordained. As to the marriage itself, there was no occasion to make provision, since an universal custom already provided that it was to be dissolved.

Such has been the Divine law of marriage as recognized by the whole Christian Church. The attempt to discredit the testimony of the early Church as to the unlawfulness of the marriage with the deceased wife's sister, as though it prohibited other marriages also, not prohibited by the law of God¹, utterly fails. The first ages recognized that law, and

⁸ Can. Apost. 18.

⁹ Ib. 16—22.

¹ Questions by H. M. Commissioners.

446. "Were there *not* at that period *very many* marriages prohibited by the laws passed *at that time* [S. Augustine's] which are allowed by our Church at

it alone². For six centuries, the prohibitions were not extended beyond its limits, except perhaps in regard to the first cousin, whose marriage God, by His Providence, has declared to be unadvised, even while He did not by a positive law forbid it. "The children of such marriages do not thrive³," was written then, as it often is now, by the afflictive hand of His Providence; and the interposition of the Church saved much distress from the physical sufferings or mental decay of the offspring. Still, contemporary with its prohibition, was the acknowledgment that it was not forbidden by Divine law⁴. When later ages imposed other restrictions, the distinction between what was prohibited by Divine, what by human, law, was clearly maintained; and those degrees only were held to be prohibited by Divine law, which the Church of England now holds to be so prohibited⁵. When about the twelfth century dispensations began to be granted in the West, it was still an acknowledged principle, down to the unhappy example of the unhappy Alexander VI., that dispensations could not be given within the degrees prohibited, either by name or by parity of reason, by God in Leviticus, as being forbidden by the Divine law⁶. Even to this day, the Roman Church has no where declared any opinion that they are not so forbidden. Nay, an eminent Italian Canonist has maintained that the Council of Trent virtually forbade dispensations in the first degree (to which the sister-in-law belongs), in that it allows the second degree, among princes only, or for some public cause⁷.

This evidence appears to me so complete, that we might well be spared from considering an inference drawn from a

present and constantly practised?" 447. "Were there *not* instances of the marriage of parties connected by adoption being prohibited, and marriage of parties connected through godfathers and godmothers?"

² Evidence, *ib.* 446 sqq.

³ S. Gregory, *ib.* 461, p. 18, ed. 8vo.

⁴ S. Augustine, *ib.* 448, p. 14.

⁵ *Ib.* 466, p. 28, 471, p. 30, sqq.

⁶ *Ib.* 463 sqq. p. 21.

⁷ *Ib.* Pref. pp. vi, vii.

mere limitation of polygamy among the Jews. That prohibition is a case *per se*. It probably was an express prohibition of a marriage in which the Jews might hold themselves countenanced by that which, upon the fraud of Laban, God had allowed to Jacob. An inference, in order to be valid, must be derived from that which is itself in force. No one would be allowed, in affairs of this life, to make an inference from an abolished law. The law, "Thou shalt not take a woman unto her sister," &c., is abolished. Else, by that same way of inference, which men are so fond of when it favours laxity, it would follow that polygamy is now allowable, except with the wife's sister. But since it is abolished, it is not lawful to argue by inference, that what men suppose to have been allowed by it to the Jews, is allowed to Christians. That whole law is done away in Christ. Together with the law itself, all inferences which depend upon it, are done away also. We have no more concern with that law than we have with circumcision. As we should not make any inference as to ourselves from any law relating to circumcision, seeing circumcision has been abolished, so neither from a law relating to polygamy, seeing polygamy has been abolished. This is S. Basil's argument. He does not object to the principle of inferring one truth from another, or following out the words of a command into its details, but he objects to the inconsistency of disregarding what is burdensome to us in the Mosaic law, because it is abolished, and then pleading in behalf of men's passions an inference from a law which is equally abolished. S. Basil does not argue, as if either the moral law were abolished, or as if the prohibitions as to incestuous marriages were not part of the moral law. He himself (as do other fathers) rests the prohibition of the deceased wife's sister upon that law Lev. xviii. 6. "I maintain that this point is not passed over in silence, but that the Lawgiver hath prohibited it in the very strongest manner; for the expression, 'None of you shall approach unto any one that is near of kin to him, to uncover their nakedness,' includeth

this kind of 'nearness of kin' also. For what can be 'nearer' to a man than his own wife, or rather, than his own flesh? For 'they are no more twain, but one flesh.' So that by means of the wife, the sister also passes into the kindred of the husband." What S. Basil does object to, is an inference from a law peculiar to the Jews, and now (as all must admit) done away in Christ. "I, first of all, mention the saying, that 'whatsoever the law saith, it saith to them that are in the law;' for otherwise we should be subject to circumcision and the sabbath and abstinence from meats. For surely it cannot be, that if we find any thing that runs hand in hand with our pleasures, we are to put ourselves under the yoke of legal slavery; but if any thing in the things of the law appears grievous, we are then to run off to the liberty which is in Christ." Polygamy, like circumcision or the abstinence from meats, belongs to the law; polygamy, although rarely used, was permitted; the others were enjoined. As we should not draw any inference from what was enjoined but is now abolished, so neither from what is abolished, having been permitted only. With much more show of reason, it might be said, that marriage with the deceased brother's wife is lawful, when he had left no children. This was, for reasons which held under the law, commanded under the law. Our Lord, in answer to the captious case put by the Sadducees, did not say that the woman who was supposed to have married seven brothers in succession, would have done wrong. Advocates for the marriages of near of kin do not put this forward, because men prefer marrying maidens to marrying widows. Yet would men indeed say, that the marriage of seven brothers in succession is a Christian marriage? But the Sadducees put their case acutely. It *was* a lawful Jewish marriage. Nay it was not lawful only. Such marriage would have been a duty, on the brother's part at least, if not on the widow's. It is no where forbidden now, except under this general rule, "None of you shall approach unto the whole flesh of his flesh." As a law for a passing state of things,

God enjoined for a time the remarriage of the childless widow with her brother-in-law. That law being done away, the original prohibition stands in its full unmitigated force.

But, further, it is very dangerous to infer permissions out of the wording of prohibitions, or exceptions out of the wording of commands. God very often gives His prohibition emphatically, not, in the way of human laws, stopping up every outlet through which a wilful person might escape, but in such way as may impress His command upon the obedient. The spirit of God's commands might be evacuated, if men were allowed thus to make ways of escape for themselves, by means of inferences from the letter. It was thus that the scribes turned the command "love thy neighbour," into "hate thine enemy." "God," they said, "commanded, 'love thy neighbour ;' therefore, as to my enemy I may do as I please." What, if one were to argue thus from the 2nd Commandment, "Thou shalt not make unto thee any graven image," "I may *take* one, then, which I have not *made*?" or "Thou shalt not remove thy *neighbour's* landmark ;" "I may remove then the landmark of one who is *not my* neighbour?" or from that "Thou shalt not make the *blind* to go out of his way," "then I may misdirect one who is not blind?" or from that "Thou shalt not *raise* a false report," "then I may *propagate* a false one, or I may *raise* an *evil* report which is *not false*?" Or if from the 9th Commandment, "Thou shalt not bear false witness *against* thy neighbour," men were to argue, "Then I am not forbidden to bear false witness *for* him?" (no uncommon temptation, and indeed a very common practice.) Or what if they were to go on to argue, "God only meant to hinder malice, or injustice to my neighbour. He did not mean to prohibit an act of kindness or love. No one will be harmed by this false witness, but his or her life or honour will be saved. He or she would be degraded ; and what evil may not follow? God did not mean to prohibit this! And by thus restraining His prohibition, to false witness *against* my neighbour, He shows that in His former general prohibition, 'Thou shalt not take the Name of the Lord thy God in

vain,' He meant only, not 'by false witness against another,' or 'lightly,' or 'for vanity;' He did not mean that I might not thus save a life from death." I doubt not that thousands and ten thousands have argued thus, and have acted upon it; many more, than, under the Christian dispensation, have married their deceased wife's sister. In a popular story⁸ (which so far represents human nature), it has even been represented as the heroism of principle, that a sister would not affirm in court falsely what might have saved the life of a sister who was indeed innocent, while willing to undergo any personal risk to save it. It is the self-same argument in both cases. In both there is the absolute prohibition. In the one, "Thou shalt not approach unto the whole flesh of thy flesh." In the other, "Thou shalt not take the Name of the Lord thy God in vain." In the one, the question is raised, "Who is the flesh of my flesh? A father's widow is; a son's or grandson's widow is; a wife's daughter or granddaughter by a former husband is; an uncle's widow by the father's side is; the brother's wife, except in one special case which God has expressed, is. Is the uncle's widow by the mother's side *not*? Is the wife's sister *not*?" In the other, the question is raised, "What is taking God's Name in vain? All light swearing is forbidden; all irreverent causeless use of His Name; all use of it to any vain or idle end. But is it then forbidden to save life by a wrong use of His Name? Does not the law of love supersede all other laws? Does not God limit His own law by the command 'Thou shalt not bear false witness *against* thy neighbour?'" Plainly, this is sophistry. But we know how Rahab, and Michal, Saul's daughter, and David himself to Achish, and the woman who let down the sons of Zadok into the well, thought themselves justified in affirming what was not true. Then Christians should be careful how, in the face of an emphatic prohibition, they justify themselves in contravening the obvious meaning of that prohibition, by aid of a (if so it seem to them) plausible

⁸ Heart of Mid-Lothian.

inference from a limited prohibition, and that whole prohibition done away in Christ. The principle in common to both cases is this, that a positive prohibition of God once given, is not evacuated by a restricted prohibition on a kindred subject.

Again, take this command itself. It has the character of a very emphatic prohibition. It is divided, alike by the structure of the words and by the Hebrew colon (so to call it), into two halves.

“A wife to her sister thou shalt not take:

“To vex, ad retegendam nuditatem ejus; beside her; so long as she liveth.”

The first half is the absolute prohibition; the second consists of supplementary clauses. Certainly, so absolute and peremptory a prohibition of this special sort of polygamy, a polygamy which might come recommended to the Jews as having been used by their father Jacob, is an oddly-chosen text, on which to build the presumption to marry the second sister at all.

The order of the words seems purposely inverted for emphasis; but that inversion makes the first clause the more complete in itself, “A wife to her sister thou shalt not take.” But further, the person spoken of in the last clause, “so long as she liveth,” may be either sister. The sister who is the object of the prohibition is the second sister; she also is the sister spoken of in the clause to “uncover her nakedness:” in the next clause only does the “her” refer to the first sister. In the last clause, then, it is just as natural to take the words “so long as she liveth” of the first sister, who was the sister spoken of in the main clause of the sentence and had been spoken of in a clause just preceding, as of the second sister who is spoken of subordinately in the last only. In this case, according to a well-known idiom, “I will praise my God so long as I live” [bechaiiai], the words would be the most emphatic prohibition ever to take her.

I do not rest the argument upon this, for I believe that the real and sufficient ground which makes these marriages illegal

is, that they are directly prohibited by God's law, Lev. xviii. 6, in its natural sense, in the only sense in which it is in harmony with the rest of the chapter; that, moreover, the Apostles in the decree of Jerusalem rejected them; and that, having been rejected by them then, the Church has ever since rejected them, as contrary to the law of God. But at least it cannot be said, that the weight of authority which has been of late produced against the interpretation which would make Lev. xviii. 18 a prohibition of polygamy generally, lies against this natural construction of the words⁹.

But even suppose the words, "so long as she liveth," to relate to the first sister, S. Basil has pointed out that to turn a prohibition into a permission is no safe mode of arguing. "If such a principle of interpretation be admitted, he who wills may lawfully venture, even while the first sister liveth, to take the other. The same sophism will serve equally for that. It is written, he will say, 'Thou shalt not take, *to vex* her' (*ἀντιζήλον*), so then, he hath not prohibited taking her, when there is no 'vexing.' Whoso then pleadeth for passion will decide that the temper of the sisters hath nothing 'vexing' in it. The reason, then, being done away, for which He prohibits his living with both at once, what is to hinder his taking both sisters? But these things are not written, we will grant it, neither is the other defined; but if a meaning is to be attached to it by way of inference, it would equally afford a licence to both uses." This argument of S. Basil's is really unanswerable. Either the command, "A wife to her sister thou shalt not take," is absolute and complete in itself, or it is not. If it is absolute, the question is at an end. If it is not, but depends upon that which follows,

⁹ The paraphrase of Onkelos, and the Syriac prove nothing; they are as capable of this construction as of the other. The Septuagint is against it. S. Jerome in this place modifies the LXX, but without calling in the Hebrew. S. Jerome's own knowledge of Hebrew was but slight, although the amount of traditional knowledge, which he has preserved from his Hebrew teachers, is most valuable.

¹ Ep. 160, § 3, in my Evidence, p. 65.

to complete it, then, if you may restrain it, by an inference from the words, "so long as she liveth," so you may by the words "to vex." So you might by those other words, "ad retendam," &c., if a man declared that he took her as a sister-wife.

"This reasoning à negativis," says Bp. Jewell², "is very weak, and makes no more proof in logic than this doth, 'Corvus non est reversus ad arcam, donec exsiccatae sunt aquæ,' ergo 'he returned again after the waters were dried up.' Or, 'Joseph non cognovit eam, donec peperisset filium suum unigenitum,' ergo 'Joseph knew her after she was delivered of her first-begotten child,' or such other like." We know that such inferences have led into the gravest heresy, as to the Person and Office of our Lord. From the words of the Psalm, "Sit Thou on My right hand, *until* I make Thine enemies Thy footstool," and from those other of St. Paul, "He must reign, *until* He hath put all enemies under His feet," Marcellus fell into the heresy, first of maintaining that our Lord's kingdom would come to an end, then, into a belief that He Himself would lose His distinct existence, and finally that, as God, He never had any.

Great stress has been laid upon the fact of the concurrent opinion of writers that Lev. xviii. 18 is to be understood, not of polygamy in itself, but of the special polygamy of two sisters³, and that consequently it does not prohibit the marriage with the second (or one may say, the third, or the fourth) sister, after the death of the preceding; but rather leaves an opening for that "reasoning from negatives" which Bp. Jewell rejects as inconsequent and illogical. This, it is said, is "the ancient interpretation as received in the Church for more than 1500 years." But the respected writer has omitted to add, that as far as any writer (except that Diodorus) for the first 1500 years since our Lord allowed the inference, they allowed it, as being an inference from a law

² Letter printed in Strype's Parker, App. B. 2, No. 19, from the MS. in Corpus Christi College, reprinted in my Letter, p. 21.

³ Dr. M'Caul, The Ancient Interpretation of Lev. xviii. 18.

regulating polygamy, *in regard to the Jewish Church where polygamy was allowed, not in regard to the Christian.* The fact rather strengthens the argument against those unions. If it could be said, that we had a new interpretation of Lev. xviii. 18, unknown to the Church of old; if it could be said, that they were mistaken in their interpretation of it, that they did not see the force of the argument from it, this might have been an argument, as far as it went, to set aside their judgment. But now, Dr. M'Caul (whose respected name I deeply regret to mention in controversy) urges that they *were* cognizant of the fact, that they did interpret it in the same way as most do now. They saw the force of the argument which is now drawn from it, and yet, with one concurrent voice, they decided against it. Not one Christian writer, I believe, can be found, for fifteen centuries (except that Diodorus, mentioned by S. Basil), who had any doubt that the marriage with the deceased wife's sister was forbidden by the law of God. They had (there is good reason to think) the authority of the Apostles for so judging. Those who allowed the inference from Lev. xviii. 18 as to the Jews did not allow it as to Christians, any more than they admitted that the injunction to marry the brother's childless widow, made it permissible for a Christian to marry her now. They did not believe that Christians could set aside a direct prohibition, by aid of an inference from a limited prohibition of polygamy, which was done away. We have then, not only the judgment of the whole Christian Church, but we have that judgment formed with the consideration of that evidence from Scripture, which is urged now.

Dr. M'Caul is at pains to show that our own Divines at the time of the Reformation interpreted Lev. xviii. 18 as he does. Then, it follows as to them also, that, having that interpretation before them, they still deliberately rejected the inference from that interpretation; they repudiated the marriage with the wife's sister, as forbidden by the word of God. The prohibition passed, as is known, with Cranmer's advice, and was

embodied in 25 Henry VIII. c. 22, and repeated in 28 Henry VIII. c. 7, is contained in principle in the *Reformatio legum Ecclesiasticarum*, a work, the result of the labours (so to speak) of successive generations of our Divines in endeavouring to form a body of ecclesiastical laws, and owned to be "of great authority in determining the *practice* of those times, whatever be its correctness in matters of law⁴." The marriage was condemned by a commission, issued early in the reign of Elizabeth; then in Abp. Parker's Tables; and finally in the Canons of 1603. All who were concerned in each of these had the interpretation of Lev. xviii. 18 before them, and all rejected the marriage with the deceased wife's sister as "prohibited by the law of God⁵."

On the occasion of the Divorce Law, three years ago, many who now advocate a change in our Marriage Law, attached great weight to the opinion on divorce expressed in the *Reformatio legum Ecclesiasticarum*. The weight which those same parties shall attach to it now, will show, whether they then ascribed that weight to it for its own sake, or, simply, because it made for their argument. For if people ascribe weight to an authority when it makes for them, and not when it makes against them, it is plain that they ascribe no real weight at all to it, but simply use it as an argument against opponents.

The framers of that document express themselves most distinctly, both as to the fact that the wife's sister is prohibited by the law of God, and as to principles involving that prohibition, which have of late been disputed.

⁴ Lord Stowell, quoted in Mr. Badeley's Speech, p. 91.

⁵ Mr. Badeley states, that Luther, Melancthon, Chemnitz, Calvin, Beza, agreed in rejecting the marriage with the deceased wife's sister (Speech, p. 86—88). I cannot set any stress on the opinions of writers, who varied as they did, and had no fixed principle of interpreting God's word. Yet the result was, that these marriages were forbidden in Protestant countries, until a time came of religious and moral decay, and when they were permitted, the marriage between the uncle and niece, and a law of divorce flagrantly contrary to the law of Christ, were allowed also (see my Evidence, p. 54, 5, and Preface lxxviii—lxxxix, and on the earlier state of German law Mr. Badeley's Speech, p. 88, 9).

Under the head, "Of the degrees prohibited in marriage⁶," it enumerates the same persons who, in the Canon law, were held to be prohibited by the law of God, as "persons prohibited in Leviticus." The "wife's sister" is mentioned by name as so prohibited.

In another chapter⁷, it asserts the parity of the two sexes in this respect.

"Two rules we greatly desire to be attended to. The one is, that we should know that whatever places are ascribed to men, the same are assigned to women also, the degrees of propinquity being always alike in both. The second is, that the husband and wife be always accounted to have one flesh, and so in whatever degree of consanguinity any one stands to a man, in that same degree of affinity he stands to his wife, and so conversely."

In another chapter⁸, "On the nature of the Divorce Law in prohibiting marriage," they say,

"This is to be diligently observed in those chapters of Leviticus, that all the persons, who are not lawful, are by no means named there. For the Holy Ghost set down there evidently and expressly those persons, from whom the like spaces under the other degrees, and the differences may easily be discovered" (this expression includes the ascending and descending lines as equally prohibited).

I believe that there are few duties which might not be set aside; I believe that there are few prophecies, whose evidence might not be weakened; I believe that there are few, if any, doctrines, whose evidence would not be grievously impaired, if the mode of arguing adopted in regard to the prohibition, "None of you shall approach to the whole flesh of his flesh," &c., were extended to those subjects. I say, on consideration, that I believe that the same fine-drawing which enables men (as they think) to escape from the force of that prohibition, might much more easily be turned to prove that polygamy is not forbidden by the Gospel. I have known an

⁶ C. 5.

⁷ C. 4.

⁸ C. 3.

acute person, ensnared by his acuteness, to think undoubtedly, that our Lord prohibited, not polygamy, but divorce only. And I thought his arguments much more plausible than those, by which men strive to justify their passions, in marrying the sister of their deceased wife.

They who so argue would do well to remember, that not a single argument can be brought *from Holy Scripture* (nor indeed from any authority whatsoever) against the marriage between the uncle and niece, which does not equally hold against the marriage with the deceased wife's sister. The law of the Church and the civil law of England claim now to be in accordance with Holy Scripture. If the civil law (God forbid!) were relaxed in regard to the deceased wife's sister, that law would be inconsistent both with Holy Scripture and itself. It would have conceded what Holy Scripture forbids; but it would not have conceded all which, on that narrow interpretation of Holy Scripture, it ought consistently to concede. Continental protestant legislation has followed out its principles consistently; and, as this change dissolves the relation of the husband with his wife's sisters, so continental legislation has dissolved the relation of the uncle and niece. Passion and the love of kindred are incompatible. Where there can be passion, there can be no other love, except in marriage. Where there is the love of kindred, there can be no passion. But when passion can come in, then all loving intercourse of relationship is at an end.

It has been represented as a hardship on individuals, who have admitted into their souls a passionate love of their wives' sisters, that their children should be visited with civil disabilities⁹. This relates to the rich only, who have entailed landed property for their children to inherit. The poor, we are told, do oftentimes break both human and Divine law, and are not affected by human legislation¹. What human or Divine law is not far more frequently broken by those popula-

⁹ M'Caul, p. 58.

¹ Evidence, 52—54, Pref. p. ix, et sqq.

tions in our great towns which human charity has abandoned, than this law as to the marriage of the deceased wife's sister? I say advisedly, that I do not think that in London (with the exception of one sin which there is no opportunity of committing) there is *any one law of God* which is so little broken as those laws which forbid marriage with persons near of kin, including the deceased wife's sister. But what hypocrisy then is the argument, which would plead that this law is useless, because it is broken, when the same class of persons, who, it is said, break it, break still more the laws of nature and of God, who, in nature and by revelation, enacts those laws. It has been the miserable agitation maintained, these twenty years, by a few headstrong persons, who gave way to passions which they might have controlled, which has cast a degree of uncertainty over a relation, still so sacred. Some loss there must now be, either on the part of these persons, who have wilfully broken human law, and have, in truth, broken Divine law, or on that of the rest of the human family. For it is no hardship for a man to choose his second wife out of all but the near relations of his first. It is hard on all besides, that neither may the sisters of the wife be any longer sisters, nor (for it follows) the brothers of a husband any longer brothers, nor (for it follows consistently) the brother's or sister's daughter stand in any relation to the brother. The abolition of this law would narrow the circle of affection which God wills to expand. God willed by marriage (besides its other immediate ends) to interlace the whole of society by the fine network of human affections. He willed to conjoin, not individuals only, but families, binding together at all those different points of closer union, all connected with each pair whom He makes one. And so, as new centres are continually formed by each new marriage, He unites together the threads of human love in a new bond, and the love which concentrated more intensely in the husband or wife, expands again towards the whole of the family of each. Love is enlarged in each, and all society is pervaded and bound together by these countless ties.

But all this is at end, so soon as the principle of affinity is interfered with. The principle on which these marriages are advocated is, that the wife's sister is no sister to the husband. Then her father, mother, brother, are nothing to him. They have no claim on his affections; and love, instead of expanding, is insulated in each single hearth. But if the wife's sisters are not sisters to him, they must be strangers; the husband's brothers must be strangers to the wife. There is no middle point. No one can live in the intimacy of brother or sister to the married, unless he or she be, by nature or by an inviolable law of God, brother or sister. None could be brother and sister, who, by any change of circumstances, could become husband and wife. Not only could not the deceased wife's sister be a mother to her sister's orphan children, but she must, in life too, be estranged from her sister's society. If not a sister to her husband, she is a stranger, and no stranger can be the habitual inmate of a married family. A law which should make the sister-in-law marriageable, not only, on the decease of the wife, dissolves the whole relation of the husband with her family, unless he breaks God's law (it is so now in Germany), but during her life also, it forbids any nearer intimacy. No one would have in her house any one who could rival her in her husband's affections. God has so constituted us, that passion cannot ordinarily awaken towards a brother or sister (not, I mean, except in those extreme cases, as of Amnon, when His laws and His grace are despised). A human law which should break down the force of the Divine law, would first sow the seeds of jealousy in our English homes, and then break up their affections. Jealousy is the dread of what ought not to be, but of what may be. It is the instinctive self-defence against possible wrong. Now wife or husband joy in the mutual love of each other toward their sister or brother, because it is the result of, and an expression of, the love for themselves. If the brother or sister could ever become the husband or the wife, neither husband nor wife would venture to cherish a brother's or a sister's love, lest, under the name of brother and sister, a

feeling should spring up, which should dim or do wrong to that first love, the centre of their human affections. Details of loss (such as that the husband's house could not, even in the wife's life-time, be the home of her orphan sister) lie but on the surface of this deep devastation of human affection. These are single branches, lopped off here and there: pitiable they are, but still single. The trunk which bears all these fair fruits of love, is that oneness of being of the husband and wife, which God formed in Paradise, which He has consecrated, which He blesses and protects, so long as man does not wilfully violate it. From that oneness it follows, that the relations of each become the objects of love to the other, and the deeper their mutual love, the deeper the love of each towards the relations of the other. The love towards the relations of each other acts back upon and enhances the mutual love out of which it springs. The absence of that love would not be a loss only. As the love of each other's relations increases the love of the wedded, so the absence of that love chills it. It is a violation of a deep law of nature, which God has implanted in us; and no law which He has implanted can be wronged without a deep and wide injury, deeper and wider than we can well imagine. But then it would become a duty on the part, both of husband and wife, *not* to cherish affection to each other's relations of the opposite sex. It would be a duty to them to impress upon their young affections, that these relations of each other were nothing to them. But, if they are nothing, neither are each other's relations of their own sex. And so, while husband and wife are to be "one flesh," while this new union is to be the first of human affections, they who are to be thus one, are to live altogether apart in their affections to their own relations. Their persons, their mutual love, their goods, are to belong to one another; but, in every other affection which God, by His law and by the constitution of their nature, has implanted in them, they are to live alone and insulated. Unnatural, heartless, Godless principle, contravening alike God's teaching in His law and in the well-regulated human

heart, detaching and loosening what God has united in the strictest inviolable oneness, and attesting, by the miserableness of that contravention, that it is not of God. If this law were passed, a blow would be struck at the beautiful married life of England, under which, sooner or later, it will wither.

If it passed, doubtless the infection would spread. All evil example does. Men become accustomed to almost any evil. The presence too of our Bishops in the House of Lords has given an impression, that laws, bearing positively on religion, would not be against the law of God. And so, if such laws be passed, the presence of the Bishops aggravates the evil. It is pitiable, amid that wide desolation, to think how individual consciences would be betrayed, and people, taking for granted that English law would not contravene the law of God, would be misled into breaches of God's law, which, of themselves, they would not have broken, and, deeming themselves to be married, would be living in fornication and incest.

Whatever law is proposed, I trust that the Parochial Clergy will not have the bait proffered to them of being exempted from civil penalties if they refuse to celebrate such marriages, or, that if it is offered, they will see its valuelessness. The celebration of such marriages is but the first act, which rivets all the difficulties which follow. It cements an union, indissoluble by human law, allowing of no subsequent marriage, forbidden by the law of God,—marriage by human law, fornication according to the Divine, a life-long fornication, tinselled over by the sanctions of man, and perhaps by the ceremonial of a profaned ritual, blessed in the Name of God Who curses it. What if the conscience of either party wake, or be better informed, when too late? What if it should begin to doubt, when bound by the law of marriage to that which, if the marriage itself is against God's law, is sin? What would it be to doubt whether a person's whole religious life be not vitiated by this pervading sin, that its communions may not be profaned by it, that a person's prayers may not be hindered, while the person doubts, but persists in it, because it is as yet a strong doubt

only? And yet, in these days of manifold inquiry, doubt is likely enough to be awakened. It is not proposed, that the Church should change her law, and, if the Church would change it, she could not change the law of God. By the law of the Church, the Clergy are bound not to give communion to those openly living in an union contrary to God's word, and which the Church of England has declared to be so. The Clergy then dare not give it, lest they make themselves partakers of others' sins. The law probably would not protect them. But they must obey God rather than man. And yet how probable would it be, that such a conscientious inability to give the communion to one so married, would awaken or strengthen the doubt, at least in the woman's soul. It is said to be hard that the children of such unions should not have civil rights. How much harder to ensnare people, by the sanction of a civil law, into a state of life from which, if conscience awakes, they have no escape, except by the separation of children, bound as such parents would be to each other by man's law, but severed by God's,—their life, as long as they continue in it, a daily sin, yet that sin not to be ended except by the severance of every tie, a lifelong widowhood, unconsecrated by death or by hope of re-union, a lifelong consciousness of self-desecration. The yoke of Christ is indeed light, as compared with the destructive liberty of the world.

THE END.

