

Popes assumed the power to allow marriages within prohibited degrees, and also to dissolve them; but there seems to have been a general opinion that this power of Papal dispensation only extended to prohibitions imposed by ecclesiastical authority and did not extend to the prohibitions of the Levitical law, and although Henry VIII.'s marriage with his deceased brother's wife had been contracted under a Papal dispensation, it was by some theologians considered that the dispensation was invalid and beyond the power of a Pope to grant. Be that as it may, that was a divorce case fraught with most momentous consequences.

Since that celebrated case, opinion on the subject of divorce has undergone a great change in England. By the denial of Papal supremacy and the forbidding of all appeals to Rome, England was left without any recognized judicature for absolutely dissolving marriages. The courts Christian there continued after the Reformation to exercise the same limited jurisdiction they had done before the Reformation, they granted divorces from bed and board, but in no case an absolute divorce; and they continued to grant decrees of nullity of marriage in cases only where they were tainted with some imperfection which rendered them void ab initio.

In this condition of affairs Parliament began to make Acts of Parliament dissolving marriages absolutely and giving power to the divorcees to marry other people. This, however, was an expensive luxury available only by the rich, and had usually to be preceded by an action of crim. con., in which the guilt of one of the parties to the marriage would be established before a jury. As for the poor, their only remedy was to take the law into their own hands and commit bigamy, with the chance of a criminal prosecution. This inequality of the law was graphically described by Maule, J., in his humorous address to some poor bigamist convicted before him.

After existing for about three centuries this anomalous condition of affairs was put an end to, or at all events to some extent alleviated, by the establishment of a purely secular divorce