

In 1861, *Brook v. Brook*, 9 H.L.C. 193, was decided by the House of Lords. The question in that case was whether a marriage by a domiciled Englishman with his deceased wife's sister was valid, the marriage having been solemnized in Denmark, where such marriages are allowed by law. For the purpose of that decision it was necessary to determine whether a marriage with a deceased wife's sister was prohibited by the law of England. The case came originally before Stuart, V.C., and Cresswell, J., sat with him as assessor, and in the opinion which Cresswell, J., gave, he quotes, at p. 511, without dissent, the passage above cited from the judgment delivered by Baron Parke in *Sherwood v. Ray*, and he there says "this statement of the law was fully adopted by the Court of Queen's Bench in *Regina v. Chadwick*." Stuart, V.C., on that point uses the following language: "If the marriage had been solemnized in England, as it was a marriage between a widower and the sister of his deceased wife, it is settled that, according to the law of England, it was null and void to all intents and purposes whatsoever. As to this I have no doubt. It was so settled by the decision of the Court of Queen's Bench in the case of *The Queen v. Chadwick*, 11 Q.B. 105, and in hearing the present case I have had the great advantage of the assistance and advice of Mr. Justice Cresswell, who considers the law upon this point to be clear." When the case was argued before the House of Lords, it was contended on behalf of the appellants by Sir Fitzroy Kelly, who had made a very able but unsuccessful argument in *Regina v. Chadwick*, and who entertained a strong opinion that that case had been wrongly decided (see his argument in *Brook v. Brook*, 3 Sm. & G., p. 505), and he availed himself of the opportunity of so contending before the House of Lords. He argued that marriages with a deceased wife's sister could only be held invalid if contrary to the law of God, but, he said, "that is not asserted by any statute in this country, the only statute which did declare it, 23 Hen. 8, c. 7, having been repealed." Lord Chancellor Campbell in giving judgment, said: "Such a marriage (i.e., between a widower and his deceased wife's sister) was expressly prohibited by the Legislature of this country, and was prohibited expressly on the ground that it was 'contrary to God's law.' Sitting here, judicially, we are not at liberty to consider whether such a marriage is, or is not 'contrary to God's law,' or whether it is expedient or inexpedient." He adopts *Hill v. Good* and *Regina v. Chadwick* as