

marriage was exercised was in the case of the Marquis of Northampton.

In Burns' Ecclesiastical Law, by Phillimore (ed. 1842), p. 503, it is said: "The law of England is now in its letter and theory conformable to the ancient principle of the Roman Catholic Church, which regarded marriage as indissoluble. It was not till a century and a half afterwards* that a practice gradually crept in of dissolving marriage for infidelity by Acts of Parliament passed for each separate case."

Divorces *à vinculo* for causes other than those which warrant a sentence of nullity can therefore hardly with truth be said in sense to be a part of the Common Law, but are purely the result of statutory enactments. When Mr. Thompson says that the English Divorce Acts of 1857-8 did not enact new law, it appears to me he is mistaken. I think he also errs when he says that "the capital right to remarry formerly reposed in the King as head of the Church" was vested in the Probate and Divorce Court by those Acts, because the King was not the head of the Church, and in law, neither in that, nor in any other capacity, was the alleged right reposed in him, except only upon the theoretical idea that all English law is supposed to emanate from the Sovereign, and therefore in that sense, when Acts of Parliament dissolving marriage and permitting parties to remarry were passed, they may be said to be the Act of the Sovereign, but they are his Act not as the head of the Church, but as the head of the State.

The Acts in question did undoubtedly make new law, and gave a temporal Court jurisdiction to pronounce sentences of divorce *à vinculo* for causes for which no court, except the High Court of Parliament, had previously had any jurisdiction to dissolve marriages.

Mr. Thompson, I think, also errs in saying that on the passage of the Divorce Acts referred to, the Ecclesiastical Courts ceased to exist. They are still in existence but their jurisdiction is now confined to purely ecclesiastical matters.

When Mr. Thompson says that Colonies created before 1857

* We presume he means after the Reformation.