

or person, subjects or residents of this realm or in any of our dominions, of what estate, degree or degrees soever they be, shall from henceforth marry within the degrees afore rehearsed, what pretence soever shall be made to the contrary thereof.' . . . Now we must observe the Act of 1 & 2 P. & M., c. 8, doth not repeal this Act entirely of 28 Hen. 8, c. 7 but repeals only one clause of it; the words of which clause of repeal are before cited and manifest, the second clause of the Act of 28 Hen. 8, and not the first to be the clause intended to be repealed." (a) In that case a consultation was granted. Matters remained in this condition in England when 5 & 6 W. 4. c. 54, was passed, which made null and void all marriages within "the prohibited degrees;" such marriages, up to that time, having been voidable only by sentence of the Ecclesiastical Court pronounced during the lifetime of both parties.

In 1837, *Sherwood v. Ray*, 1 Moore P.C. 353, was decided by the Judicial Committee of the Privy Council (Lord Brougham, Mr. Baron Parke, the Chief Judge of the Court of Bankruptcy, and Sir John Nichol). The suit was brought in the Ecclesiastical Court by the father of a lady to have a marriage contracted by her with her deceased sister's husband annulled, on the ground of its being a marriage within "the prohibited degrees," and the sentence of the Court of Arches, annulling the marriage, was affirmed by the Judicial Committee. The difficulties connected with the question of what are "the prohibited degrees" are stated very carefully and fully by the reporter in a note to that case on pp. 355 et seq. The validity of the marriage was but faintly argued, if at all, but the case appears to have been disposed of mainly on the question whether the plaintiff had any *locus standi* to maintain the suit. But Baron Parke, who delivered the judgment, says at p. 395, "That marriage (i.e., the one in question) having been celebrated between persons within the Levitical degrees, and prohibited from inter-marrying by Holy Scripture, as interpreted by the canon law and by the

(a) That contention was answered by counsel for the respondents in *St. Giles v. St. Marys*, 11 Q.B. 119, as follows: "The recitals of a statute are not binding upon courts of law, except for the purpose of construing the particular Act in which they are contained. A recital standing alone can have no force." But this does not appear conclusive; as a general proposition it is correct, no doubt, but in the very peculiar circumstances of the Act in question it is hard to see why if the recital was in fact left unrepealed it might not properly be used to explain another Act in *pari materia*.