

as illegitimate in England If nothing more can be done in the matter, at least respectful but vigorous protests should be made against subjecting law-abiding and moral-living Canadians to legal and social discrimination which it would be easy to prevent." The object of this present article is to consider how far these statements are true, and to see what is the extent of the grievance, if any, to which "law-abiding and moral-living Canadians" are subject.

The writer does not aim at discussing or solving the main question, a theological one, as to the wickedness or otherwise of the marriages in question. Men of the highest character and learning have differed widely in regard to this. Non nobis tantas componere lites. But he may be permitted to say that in his humble judgment the doctrine in question is an absurd one, and (again speaking with submission), has no warrant for it in the law of God, although Acts of Parliament may have so affirmed.

"All the best modern authorities," says a very learned English jurist, "are against the view that it (the law of Moses) contains any prohibition to marry the sister of a deceased wife. It is notwithstanding quite settled that such marriages are by our law void (in England), and a good deal is to be said on grounds of public policy in favour of the prohibition."

II. HISTORY OF THE LAW IN ENGLAND.

It is proposed to discuss briefly, from a historical standpoint, the position of the law in England and Ontario respectively as to the marriages in question, and then to consider how far Canadians are injuriously affected by the provisions of the English law.

1. Prior to Lord Lyndhurst's Act.

The starting point of statute law on this subject dates from the reign of Henry VIII. Prior to that time marriage with a deceased wife's sister, or between persons in similar relations, was prohibited by the canon law of the Church of Rome, which was based upon the ruling of a provincial council in A.D. 305, but "the Church was not averse to exercise its dispensing power for a pecuniary compensation." By virtue of this dispensing power the King was enabled to marry Catherine of Arragon, the widow of his deceased brother.