

Correspondence

MARRIAGE—PROHIBITED DEGREES IN CANADA.

To the Editor CANADA LAW JOURNAL:

SIR:—Permit me to point out that Mr. Raney, K.C., is mistaken when he says (p. 85 *supra*) that it was under 28 Hen. VIII. ch. 7 that Henry VIII. was divorced from Queen Catherine. A brief reference to dates will shew this. The so-called divorce (it was really a declaration of nullity of marriage) was pronounced 23rd May, 1533. The statute 27 Hen. VIII. ch. 7 was passed in the year 1536. It is clear that Henry could not have been "divorced" under a statute which was not passed until three years after the so-called "divorce" had taken place.

A perusal of 32 Hen. VIII. ch. 38 will shew to any unprejudiced mind that Henry's Parliament had the most excellent reasons for its legislation concerning prohibited degrees, altogether apart from any wish to favour the King's amatory desires. They took the subject out of the hands of ecclesiastics, who had dealt with it, as Mr. Raney states, in order to raise money, and they gave a legal sanction only to the prohibitions stated explicitly or implicitly in the Bible, which were what they called "God's law." For it must always be remembered that the prohibitions set forth in 28 Hen. VIII. ch. 7 are not of the Parliament's own devising, but merely those set forth in the Bible (Lev., c. 18), which in those days was generally considered by Christian people, and by most Christian people is still considered, to be "God's law" on the subject. This is really on what our prohibited degrees in Canada are based, and not the "matrimonial vagaries" of Henry VIII., as Mr. Raney states.

GEO. S. HOLMESTED.

[It seemed best to hand the above letter to Mr. Raney to answer. The discussion is especially interesting as the two learned gentlemen engaged in it are specially versed in the subject. Mr. Raney's answer is as follows:—

"Mr. Holmested is quite right in saying that the dissolution of the marriage tie between Henry and Catherine was really by a declaration of nullity. But a declaration of nullity is, both by the dictionaries and colloquially, also a divorce, and the historians, Green, for instance, sometimes speak of the decree of separation of Henry and Catherine as a declaration of nullity, but more often as a divorce.

I have to thank Mr. Holmested for calling attention to the error in citation. The statute which I intended to cite was the