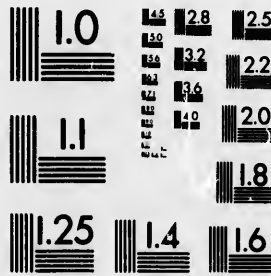


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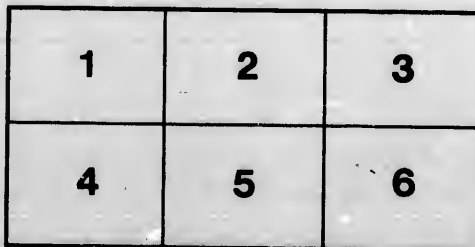
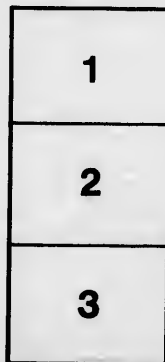
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REASONS FOR REJECTING
THE
PROPOSED ALTERATIONS
IN THE
Marriage Law of the Dominion.

BY HIBBERT BINNEY, D. D.,
BISHOP OF NOVA SCOTIA.

HALIFAX, N. S. :
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1880.

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Assuming, as generally admitted, that in a Christian land there must be some restrictions as to marriage between those who are near of kin, we may assume also that the laws imposing such restrictions ought not to be changed without some good and clearly ascertained cause.

The question then arises: Is there any sufficient cause for the change now proposed? Unquestionably it must affect the position of many who are now living happily together as brother and sister, without thought of the possibility of any nearer connection, and free from all suspicion of evil, they having, in some cases, been thus accustomed to each other's society for many years, during the life time of the husband or wife, now deceased. Is it reasonable, is it just, to alter the law merely because a few widowers and widows would like to marry a deceased wife's sister or a deceased husband's brother? No one pretends that more than a mere fraction of the bereaved would care to avail themselves of the permission; and it is contrary to sound principles to legislate for the very few, when such legislation must injuriously affect the welfare and happiness of a much larger number. In such a delicate matter as the relations of the sexes, the interests of society demand clear, definite laws, and the discouragement of every tendency to tamper with them, unless their effect can be clearly shown to be much more generally injurious than beneficial, which is certainly not the case with the law proposed to be altered.

We have not the means of ascertaining the number of instances in which the law has been violated in the Dominion, or in which persons within the prohibited degrees are living together without the ceremony of marriage; but Lord Hathley (then Sir William Page Wood) stated some years ago that a careful examination of two united parishes in Westminster, with a population of 60,000, disclosed only three such cases. And a clergyman of long experience had met with the following shocking cases of incest, of which the smallest number were with deceased wife's sister—only three; there being seven of men with their own daughters, ten with their own sisters, and six with their own nieces.

So that if the transgression of the law is to be adduced as an argument for its repeal, the most shocking abominations may be sanctioned.

The preceding reason is general in its application, but we maintain further that the restrictions, which it is proposed to annul, are divine. This was the judgment of the whole of Christendom for more than 1400 years, and is still maintained and acted upon by the Eastern Church. It was so also in the Western Church until, toward the end of the 15th Century, one of the Popes was induced to grant a dispensation for marriage with a deceased wife's sister; and we know that Henry VII. had much difficulty in obtaining from Julius II. a dispensation for the marriage of his Son Henry with the widow of his deceased Son Arthur. These marriages therefore were, and are, condemned by the Church of Rome, but she prefers having the power to give, or rather to sell, dispensations, this power being however denied by some of her greatest theologians, as for example, Thomas Aquinas specially approved by the present Pope.

In the 99th Canon of the Church of England it is affirmed that the degrees expressed in a table set forth by authority, A. D. 1563, are prohibited by the *laws of God*. And in Scotland the Confession of Faith, tied by Parliament in 1690, declares "Marriage ought not to be within the degrees of consanguinity or affinity forbidden in the Word. The man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of her husband's kindred nearer in blood than of her own." Now the authority for these prohibitions, is formally and solemnly declared to be Levit., Chap. xviii, and it cannot be safe to annul any of them unless satisfactory proof can be adduced that all the ancient authorities, and the learned Divines of England and Scotland, whose views have been adopted and ratified by the State, were mistaken in their reading of Holy Scripture; and every member of a Legislature who votes in opposition to such *prima facie* evidence, incurs a heavy responsibility, unless he has previously examined it, and convinced himself that it is erroneous.

In the chapter on which the table is based, we have first a prohibition of marriage "with any that is near of kin," and then in v. 16 expressly "with a brother's wife," which the Bill now introduced would legalize. It is true that such a marriage was ordered, in one specified case, for a special purpose, under the Jewish dispensation, but only when there had been no issue of the first marriage, and the surviving brother was then so substituted for the deceased, that the first-born son was to be called the son of the deceased brother, and not of his actual father. Moreover, lest this command should be misunderstood, or encourage an infringement of the prohibition in other cases, God affixed a special token of his displeasure to the wilful disregard of the prohibition; "If a man shall take his brother's wife, it is an unclean thing; they shall die childless."

It cannot be pretended that this Chapter of Leviticus is of partial obligation, or contains merely ceremonial precepts, for of all the things prohibited it is written, "defile not ye yourselves in any

of these things, for in all these the nations are defiled which I cast out before you, and the land is defiled, therefore I do visit the iniquity thereof upon it, and the land itself vomiteth out her inhabitants." Here then is a warning to *us*, if we accept the Word of God as a revelation of His will, and we have every reason to infer that we are bound by a stricter law, that relaxations permitted to the Jews are not permitted to us Christians, who are required to exercise more self-control, and to aim at a higher degree of purity. He whom we own as our Master, has taught us that polygamy and divorce, allowed under the old dispensation, cannot be permitted to Christians, and that man and wife are absolutely one. This is the principle of the maxim, that the degrees of affinity, within which marriage is prohibited, are the same as those of consanguinity. Hence, a man may not marry his wife's sister, any more than his own, nor a woman her husband's brother. Moreover, since, as Bishop Jewel has it, "between one man and two sisters, and one woman and two brothers is like analogy;" therefore, since, by verse 16, one woman may not marry two brothers, it follows that one man may not marry two sisters, as the prohibition of marriage with a daughter is inferred from v. 7 where mother and son are mentioned. It should be understood that the argument is without any reference to the 18th verse, of which we can only say that its meaning is uncertain as shewn by the translation in the margin of our Bibles, where we read, "one wife to another," it being understood that the word sister is used merely to signify another woman; and this translation is supported by its use in several other places. If so it is a prohibition of polygamy, the words "in her life time" being added, to show that it does not forbid a second marriage after the death of the first wife. And we may infer, if the translation in the text is correct, that the spirit of the prohibition should protect the wife from the vexation of a sister's rivalry, in the only way in which it can be now dreaded, since polygamy is abolished, viz, when looking forward to her own removal by death.

It is the part of prudence to consider, before taking any step, whether any evil consequences must inevitably follow; and it is certain that if marriage with a wife's sister, or a husband's brother be allowed, marriage with the daughter, or the son of the sister, or brother, cannot be prohibited, so that uncles may marry nieces, and aunts may marry nephews, and either restraint must be put on the present familiar intercourse between those who are thus related to each other, or serious evils will result from it. Moreover, it is to be observed that the promoters of the present Bill propose much more than has ever been attempted in England; and only last year the Secretary of State for India, Lord Cranbrook, argued against the Bill for legalising marriage with a wife's sister, that it would probably be a step towards allowing it with a deceased husband's brother, which the Dominion Parliament is invited to allow at once, but no one has yet ventured even to propose in England. With respect even to the wife's sister, caution should be suggested by the fact that, although there is in England a regular organization by certain

wealthy interested families of paid agents who maintain a constant agitation, and use all possible modes of influencing public opinion; nevertheless their Bill has been rejected in the House of Commons, by four out of eight parliaments, since the Bill was first introduced, the majority, by which it has passed in the other four, having fallen from 52 to 41, while it has *never* passed a second reading in the House of Lords. And it is to be observed that the promoters of the Bill, in order to obtain even this much success, have been obliged to exclude Scotland from its operation. And some few years ago Fox Maule, (Lord Pannure) when moving for this exclusion, said: "This question, which he had undertaken to move, was the only question upon which he could really say that he believed Scotland was *almost unanimous*." It was found too, by information obtained from all the Dioceses of the Established Church, and from the Moderators of the Presbyterian Synods in Ireland, that the marriage with a deceased wife's sister was generally reprobated in that part of the United Kingdom. Why then should we in this part of the Empire disregard the strong feeling still generally existing in the Old Country, with which we are all more or less closely connected? What is to be gained by this hasty exceptional legislation?

If the marriages are legalised here, which are still prohibited in England, serious inconvenience may arise from the fact, that the descendants of such marriages will be deprived of property to which they would be entitled if legitimate in England, where they will be deemed illegitimate, notwithstanding the Colonial Legislation which may have induced their parents or ancestors to contract a marriage not recognized by English law.

Believing the marriages mentioned to be unscriptural, we should argue that they ought not to be legalized, even though apparently desirable, but we are also persuaded that it is decidedly inexpedient to allow them. It is commonly argued that the Aunt is the most suitable person to take charge of the motherless children, and for this very reason we deprecate all legislation allowing the possibility of marriage with the widower. At present an unmarried sister may take the wife's place in the household, during illness, without giving any occasion for jealousy or suspicion of any kind, and in case of death she is at hand consoling the bereaved family, and ministering to the children. But make marriage possible, and the wife, dying after a protracted illness, may be harassed with the terrible suspicion that husband and sister having become attached to one another during their long daily familiar intercourse, are looking for her death; and in any case the motherless children must be deprived of the loving care of the unmarried aunt, at the very time when it would be most valuable; for if she is no longer to be regarded as the widower's own sister, she will shrink from the appearance of thrusting herself upon him. Moreover, even if he be disposed to have her, and she is willing to become his second wife, no one would advocate their union until after the lapse of a decent period; and in the meantime she could not with greater propriety be an inmate of the house than any other young woman could be. The probability is that, while a change in the law would injuriously affect the position of every wife's sister, with

reference to the husband, both in the wife's lifetime, and also in case of her death, there are few cases in which they would really choose to intermarry, and fewer still in which, after having children of her own, she would be better than any other step-mother to her nephews and nieces. So also, with reference to the other marriage intended to be legalised, the presence of a younger brother in the household, may not then be so satisfactory as it is now. The husband is much occupied with his profession or his business, anxiously providing for his family, while the younger brother, being much more free, is useful, and attentive, and a pleasant companion to the wife. This is a happy, unobjectional state of things, so long as he can only be a brother, but admit the possibility of marriage after the husband's death, and, human nature being what it is, there will probably, in the course of time, be some feelings of jealousy and suspicion in the husband, more especially in case of ill health. There are probably few husbands whose happiness will be increased by the knowledge that their widows may be married to their brothers.

In the Bill now before Parliament there is a proviso that must certainly be condemned, when fully considered, for it makes the legality of the marriage depend upon the action of parties external to the Parliament. If these marriages should unhappily be legalized, it is but just to exempt from any obligation to celebrate them, ministers, who could not do so without transgressing the laws of the body whereof they are officers; and it is always in the power of any body of Christians to say to its members, you must not take advantage of this law, without a dispensation from us, and we shall refuse to celebrate your marriage without it. But suppose a mixed marriage, where one of the parties is a Roman Catholic, or a marriage of Roman Catholics by a minister of another Church, is the marriage to be invalid because such dispensation has not been obtained? There are several supposable cases, in which this proviso will occasion confusion and uncertainty, and the Legislature might as well undertake to determine what ceremonial shall be essential to the validity of a marriage, in any branch of the Church, as to require the grant of a dispensation as a condition thereof under any circumstances. Moreover, such a proviso in favor of *one* Church is a violation of the principle of religious equality.

Lastly, I cannot understand on what plea legislation of so great importance to the whole community can be justified, without allowing due time for ascertaining the sentiments of the people generally. The seat of Legislation is so far removed from the Maritime Provinces that they are placed at a great disadvantage. In England, what is spoken in London is scattered in print over the whole Kingdom, within a few hours; but here those living at any considerable distance from the Capital know nothing more of the speeches and arguments in Parliament than the contents of a few brief telegrams; and full time should be allowed them to obtain information, and to make known their wishes by petitions, or through their representatives. One of these changes peculiarly affects the happiness of women, and in England they have numerously opposed it, and time should be allowed for obtaining their petitions here, and

generally for disseminating information upon the subject throughout the Dominion.

Very few people have considered the question at all, and when it is first mooted they naturally are inclined to the side of liberty, not perceiving that the liberty granted to the few may be positive injustice to the many. But I have known many instances of a change of opinion as soon as their attention has been directed to the Law of God, and the judgment of the whole Church for many centuries, and they have been asked to consider the probable practical effect upon the domestic life. It is true that the marriages under consideration are legal in America and some other countries, but so are many others to which we are unaccustomed, and it is to be observed that in all these countries divorce is also very easy and frequent. We ask, is not the English family life in some respects different from, and superior to, that of any other country? Its peculiar characteristics are our inheritance, and I believe that we owe very much, and probably more than we are aware of, to our recognition of the divine laws with respect to marriage, which permits the secure, unsuspected familiar intercourse common among those who are connected by affinity equally with blood relations.

It is to be hoped, therefore, that the Senate, whose office is to check rash legislation, will, even if it be favorable to the proposed alterations, reject the Bill for the present Session, on the ground that the subject has been introduced without any warning, and that such a radical change should not be effected hastily, without any proof that the deliberate opinion of those, whose domestic happiness and comfort are at stake, is in favor of it.

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