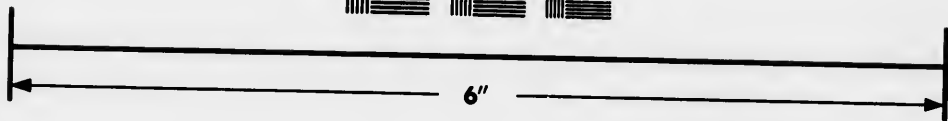
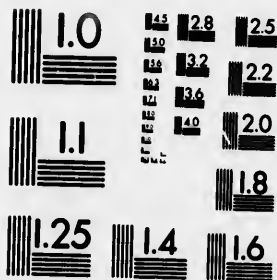


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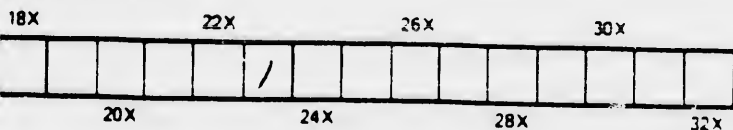
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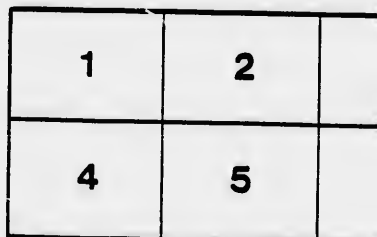
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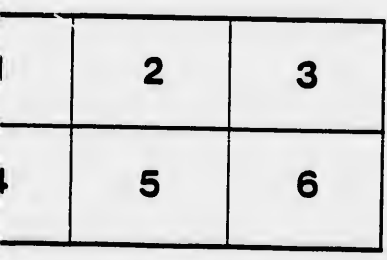
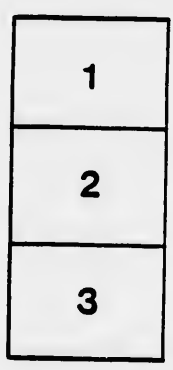
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HISTORICAL EVIDENCE

BY

HOLLINGWORTH TULLY KINGDON, D.D. CANIAR.

BISHOP-COADIUTOR OF FREDERICTON

'The sanctity of marriage as a Christian obligation implies the faithful union of one man with one woman until the union is severed by death.'—*Lambeth Encyclical*, 1888, signed by 145 Bishops

Montreal

E. M. RENOUE, ST CATHERINE STREET

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INTRODUCTION.

IN September 1889 the Lower House of the Provincial Synod of the Ecclesiastical Province of Canada requested that a Joint Committee of Both Houses might be appointed to prepare and present a Canon on the subject of Marriage and Divorce, to report at the ensuing session in 1892.

The Upper House appointed the writer of this pamphlet as their sole representative—a most unusual, if not unique, occurrence.

But though this was a very great honour, yet it entailed great responsibility, which has resulted in the publication of this pamphlet. It was found to be impossible to bring all the historical evidence together in the report which recommended the Canon; and as it was very advisable, if not necessary, that the evidence should be brought together, that it might be in the hands of the members of the Synod while the matter is under discussion, the solitary representative of the House of Bishops has undertaken the compilation.

An endeavour has been made to present the evidence in as impartial a manner as possible, though this is doubtless rather a difficult matter. It must be confessed that the profound wisdom, piety, and learning, combined with 'the exhaustive affluence of the stores' of information in Mr. Keble's 'Sequel,' seems far more conclusive to the compiler of this pamphlet than the meagre and, *pæc tanti viri*, prejudiced note of Dr. Pusey, against which Mr. Keble wrote.

When there was abundance of evidence as to the mind of S. Augustine on the matter in hand, Dr. Pusey, without any reference to the many folios of the Father, wrote:— 'S. Augustine dissuades from it [*i.e.* remarriage after divorce], but regards it as a venial error.' Bingham of

the same Father writes:—‘S. Austin was fully persuaded in his own mind that such marriages after divorce were unlawful,’ and gives six references in proof of his statement. At first it would seem hard to reconcile the two decisions; but, as it would seem, Dr. Pusey’s view is very partial, and in combining the two judgments some interlinear italics are advisable. Thus:—‘S. Augustine regards it as a venial error *in the unbaptized and uninstructed heathen*, but was fully persuaded in his own mind that such marriages after divorce were unlawful *for Christians.*’ The unconditioned statement of Dr. Pusey can scarcely (so far as the search of the writer goes) be substantiated.

In all such investigation care must be taken to distinguish between ‘divorce *a vinculo matrimonii*’—divorce from the *bond* of marriage, which leaves both parties free to marry—and ‘divorce *a mensa et thoro*,’ which is now commonly called *separation*.

In the English Church divorce from the bond has only been granted for such antecedent impediment as made the supposed marriage an unreality, or nullity.

Mr. Keble argues that there is nothing to show that where *divorce* or *separation* is recognized, as is sometimes the case, remarriage after such separation is allowed. Certainly sometimes (as *e.g.* in the Apostolical Constitutions, which see in the Section on ‘the Canons of the Church’) the language is somewhat strained in order that a particular interpretation may be enforced.

Then, again, when the Church was surrounded by unbaptized unbelievers, the divorce or desertion by the unbeliever was a different matter from the separation of two Christians.

In the Section on ‘Divorce in Canada’ the writer untied the red-tape knot, which had not been untied (so it seems) for one hundred years; and prints now for the first time the ‘observations of the Bishop of London’ upon the Marriage and Divorce Act of New Brunswick. It is true that the Legislature of New Brunswick was the first in the British Empire to pass an Act to make adultery a cause for divorce *from the bond of marriage* in the Law Courts. But it is also true that it was only done in consequence of the suggestion of the Bishop of London for the time being, Dr. Beilby Porteus, a native of Virginia. It would almost seem as if the Bishop entirely failed to see the distinction (recognized in the first Act passed, and emphasized by the

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wise Governor, Thomas Carleton) between *divorce from the bond* and *divorce from bed and board*. The Legislature were quite ready to take the hint, and in 1791 adultery was, for the first time in the British Empire, made one of the *ordinary* causes of divorce from the bond of marriage.

In England 'relief' had been given from time to time by special and peculiar Acts of Parliament to such as could afford the expense, but it was not until 1857 that a regular civil Divorce Court was established.

The Canon to be recommended to the Provincial Synod cannot be given here, as it has not yet been presented to the Synod; but it is hoped that it will be a help to Church folk if it be passed.

The compiler desires to record his thanks to a kind friend, who for a quarter of a century has never failed in his kindness, who has undertaken to see this *brochure* through the press.

He would also desire to thank Mr. John Alexander Gemmill for his courtesy in affording him ample information concerning divorce in Canada proper, and for his book on Parliamentary divorce.

Almost all the quotations have been verified in the compiler's library; there are one or two which have been taken directly from Mr. Keble, who had access to large libraries, denied to a colonial bishop. In each case the authority has been given. Advantage has been taken of the remarks of a dear friend and brother, the learned John Walter Lea, now gone to his reward. A more impartial and evenly-balanced mind the writer never came into contact with. His beautiful death (he died in church on his knees during the Litany) was a great loss to his friends.

The following books have been of more or less assistance in the compilation. The list might be enlarged, for the question has attracted a. and is attracting much attention, but the following are the most valuable:—

- Pusey, Dr. E. B.: Note O, on page 431 of the first volume of the translation of Tertullian in the *Library of the Fathers*. 1842 (two pages).
- Keble, John: *An Argument against immediately repealing the Laws which treat the Nuptial Bond as indissoluble*. 1857.
- Keble, John: *Sequel to Argument*. 1857 (pp. 220).
- Considerations on Divorce a Vinculo*. By a Barrister. 1857.
- A Letter to Lord Arthur Hervey*. By a Clergyman. 1857.

Divorce and Divorce Legislation. By T. D. Woolsey. 1882.

The Laws of Marriage. By Rev. John Fulton, D.D. 1883. (A most useful and complete book.)

Divorce and Remarriage of Converts to Christianity, especially in the East Indies. By Rev. F. W. Fuller and Canon Churton.

Marriage and Divorce. By D. Convers. 1889.

Marriage and Divorce. By B. Franklin. 1889.

Parliamentary Divorce. By J. A. Gemmill. 1889.

Remarriage after Divorce. Papers by Sir Walter Phillimore, Bart., D.C.L., and John Walter Lea, Esq., F.R.Hist.Soc.

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I.

THE NEW TESTAMENT SCRIPTURES.

Ο ΟΥΝ Ο ΘΕΟΣ CΥΝΕΖΕΥΞΕΝ ΑΝΘΡΩΠΟΣ
ΜΗ ΧΩΡΙΖΕΤΩ.

THAT WHICH GOD HATH JOINED TOGETHER LET NOT
MAN PUT ASUNDER.

'He that despiseth, despiseth not man but GOD.'

CHRONOLOGICAL ORDER.

(From *Speaker's Commentary*.)

A. D.	
53	Epistles to the Thessalonians.
57-58	{ First Epistle to the Corinthians.
	{ Second " " Galatians.
	{ The Epistle to the Romans.
	{ " " "
62-63	{ The Epistle to the Philippians.
	{ " " Ephesians.
	{ " " Colossians.
About 65	S. Matthew's Gospel.
Later	S. Mark.
About 75	S. Luke.

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I.

THE NEW TESTAMENT SCRIPTURES.

IN the endeavour to ascertain the law laid down for Christians in the New Testament Scriptures, it will be most useful to take these Scriptures in their chronological order. The reason of this is obvious. While some statement in a later writing may be explained or elucidated by an earlier writing, we clearly have no right to maintain that any earlier writing is to be understood by something that appears later. The argument that the authors of various writings never saw each other's work is one that will hold in more ways than one. For if it be argued that a later writer, in his introduction of some variation or exception to a more general statement of an earlier author, was not aware of the previous omission of such condition; it must also be argued that the earlier writer could not have intended that his general statement should be conditioned by the later utterance.

The reason of these remarks will appear in the sequel.

In so controverted a question as the dates of the various books of the New Testament it has been thought advisable to choose out an arrangement which has been generally accepted as trustworthy, and the dates are given from *The Speaker's Commentary*.

This would show that most of S. Paul's Epistles were written before any Gospel was committed to writing. In a pamphlet like the present it is impossible to argue out every such position, but this is remarkably borne out by the fact that in every known Liturgy the Epistle is read before the Gospel. For just as in the reputed most ancient Western Liturgy in living use—viz. the Ambrosian—there is often a prophecy from the Old Testament preceding the Epistle and Gospel, pointing to a time when there was no Scripture but the Old Testament, and this, therefore, came first, and the others were added afterwards;

so priority of writing, and therefore priority of reading in public, is most probably 'the reason of the Epistles *universally* taking the precedence.'

This being the case, the Epistles of S. Paul must come first in our investigation.

As might be expected, marriage was one of the first and foremost subjects which occupied the attention, and found a prominent place in the teaching, of the Apostle to the Gentiles in his conversion of the world.

That this was so is seen very remarkably in the very first Epistle which he wrote, which would be but some twenty years after the Lord's Ascension into heaven. The Apostle is writing to a church which had been converted and founded in three weeks, and three weeks only. Yet we learn that during these three weeks the Apostle had made an especial point of teaching the extreme importance of marriage, as being in a peculiar manner under God's guardianship. The exact translation of the whole passage is as follows :—

'Finally then, brethren, we beseech and exhort you in the Lord Jesus, that, as ye received of us how ye ought to walk and to please God, even as ye do walk—that ye abound more and more. For ye know what orders we gave you by the Lord Jesus. For this is the will of God, ever your sanctification, that you keep yourselves back from fornication; that each one of you know how to acquire his own vessel in sanctification and honour, not in the passion of lust, even as the Gentiles, which know not God; that no man overreach and defraud his *brother* in the matter; because avenger is the Lord in all these things, just as also we forewarned you and testified.'

The whole passage is about the extreme sanctity of marriage: and the Apostle distinctly says that he handed on the 'orders' received from the Commander-in-Chief, the 'Captain of our Salvation.' For the word used, *παράγγελία*, is the technical word used for the 'orders' given by and received from the officer in charge. The word occurs five times in the New Testament, and each time in this sense. The Revised Version always has 'charge,' which is very well, but does not bring out the peremptory character of *παράγγελία*. Thus the High Priest said (Acts v. 28), *παράγγελία παρηγγειλαμεν*, 'We gave you special orders.' Then of the gaoler at Philippi (Acts xvi. 24), *παράγγελίαν τοιαύτην ειληφώς*, 'having received such an order.' S.

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Paul uses the word twice in the First Epistle to Timothy (1 Tim. i. 5), 'the end of the *general order* is this'; and (1 Tim. i. 18), 'this *general order* I commit into your hands,' evidently for transmission. So in this passage we may paraphrase, 'You know perfectly well what the general orders are which we gave you from the Captain of our Salvation, the Lord Jesus.'

The next point to be remarked upon is the phrase 'acquire his own vessel'; this most probably means 'get his own wife.' The common interpretation has been improperly emphasized by the marginal reference, inserted without authority, under the supervision of one Dr. Blayney, about one hundred years ago. It is not in the Authorized Version, and probably can be convicted of a double error: giving a wrong meaning here, and an erroneous interpretation in 1 Sam. xxi. 5. The tense of the verb precludes the meaning of the Authorized Version, 'possess': the Revised Version attempts a modification, 'possess himself of,' but it is simpler to use the representative English word 'to acquire.' The word is used in the old Greek 'Authorized' Version (the Septuagint) for marrying a wife (Ruth iv. 10, 'have I *purchased* to be my wife,' *κέκτημαι εἰς γυναῖκα*). The word 'vessel' is a word commonly understood by the Jews for wife' (cf. S. Peter iii. 7, 'the weaker *vessel*').

The Authorized Version, 'any matter,' as if of business in general, is not in accordance with true grammar. The true rendering is in the Authorized margin. The Vulgate version, *negotio*, influenced our translators from the first. Wicliff had 'chaffaringe,' which Tyndale changed to 'business'; the Geneva version had 'any matter,' which was accepted in 1611, though the true rendering found a place in the margin, namely, 'in the matter.'

It is interesting to remember that in another passage S. Paul uses the same word as a gentle euphemism for incest (2 Cor. vii. 11). The words in the Greek for 'some uncleanness' in Deut. xxiv. 1 are *ἄσχημον πρᾶγμα*.

The Apostle here asserts that the avenger in such cases is the Lord Himself. He also asserts that this is one of the matters on which he has *orders* from the Lord to transmit to others. He ends this paragraph in the most solemn way: 'Therefore he that despiseth, despiseth not man, but God, Who hath also given unto us His Holy Spirit.' The law he had given them about marriage and

its surroundings was not the law of man ; it was an ORDER from God. The whole paragraph emphasizes in a remarkable manner the extreme sanctity of marriage, and the foremost place it occupied in the Catechism of Christianity. This, too, as the result of the direct instruction from the Lord Jesus Himself.

Next we find a more direct statement in what is one of the next, if not *the* next, inspired writing of the New Testament, the First Epistle to the Corinthians. When S. Paul wrote to the Thessalonians he was preaching at Corinth, the most luxurious and licentious city of the time, worse, probably, than Antioch. The language he uses in his letter would teach us that the Christian law of marriage would certainly be prominent in his sermons at Corinth. In the First Epistle to the Corinthians he is answering questions of casuistry which had arisen in the church of his founding. Amongst the questions there were some on the subject of marriage. In the middle of his answer he writes (1 Cor. vii. 10) :—

‘To the married I order (not I, but the Lord) the wife is not to be parted from her husband ; but if she have been parted, let her remain unmarried, or be reconciled to her husband ; and let not the husband abandon his wife.’ And, further on : ‘A wife is bound for so long time as her husband liveth ; but if her husband have fallen asleep, she is free to be married to whom she will ; only in the Lord’ (verse 39).

This is the essence of the whole passage : this forms part of the ‘General Orders’ of the Commander-in-Chief, for the word is *παραγγέλλω*, which is a military word for giving orders. It is certainly remarkable that here and in the passage in the Epistle to the Thessalonians the military terms *παραγγέλλω*, *παραγγελία* should be used as of officers’ orders, which none dare disobey. Here the ORDERS are practically this : that the married were not to be so freed by divorce as to be allowed to marry again. There is no condition expressed or implied. ‘Let her remain unmarried’ is unequivocal, and is emphasized by the verse at the end of the whole passage : ‘A wife is bound for so long time as her husband liveth ; but if her husband have fallen asleep, she is free to marry whom she will ; only in the Lord.’ Remark here that the pair are both Christian (for death is a sleep), and the only separation that is thought of is death. This of itself is significant.

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In this connection attention should be drawn to the fact that in this Epistle the Apostle claims to have two messages to deliver; one from the Lord Himself, and one from himself, as an inspired Apostle.

The first from the Lord Himself. Here we must remember that S. Paul claims more than once that his information about our Blessed Lord and His Gospel was not derived from man, nor from anyone who was an Apostle before S. Paul, but from the Lord Himself. This he emphasizes in the first two chapters of the Epistle to the Galatians. This he claims in his description of the institution of the Holy Eucharist, which was the *first account* of the institution committed to writing (1 Cor. xi. 23). It is well to remember this, because it is very misleading to do, as has been continually done, namely, to refer from 1 Cor. vii. 10 to S. Matthew's Gospel, as if S. Paul were quoting from S. Matthew; whereas S. Matthew might be regarded as quoting from his predecessor S. Paul. The truth is that both received personal instruction from the Saviour, at first hand; both would be regarded as of equal value as witnesses.

The second message of command was from S. Paul himself, the value of which he has himself appraised in a later chapter of the Epistle (1 Cor. xiv. 37): 'If any man *think himself* to be a prophet or spiritual, let him acknowledge that the things that I write unto you are *the commandments of the Lord*.' This may be, 'If any man *is reputed* to be a prophet,' and the test of the reality of his reputation is to be his acknowledgment of the reality of S. Paul's commission, as the ambassador of the Lord, empowered to give commands. *εἰ τις δοκεῖ προφήτης εἶναι*. This sense of *δοκεῖν* is not unusual in classical, New Testament, and ecclesiastical writers.¹

¹ In the Epistle to the Galatians, written just at the same time, S. Paul uses the word *δοκεῖν* in this sense, which makes it the more likely that it has this meaning here. Galatians ii. 2, *τοῖς δοκοῦσι*, 'to them which were of reputation'; 6, 'these who *seemed* to be somewhat,' twice; 9, 'who *seemed* to be pillars,' who are reputed as pillars. Similarly 1 Cor. xi. 16, 'If any man *seem* to be contentious'; Hebrews iv. 1, 'any one should *seem* to come short'; S. James i. 26, 'If any man *seem* to be religious'; has the reputation of being devout. In comparing S. Luke viii. 18 with xix. 26, it will be seen that *ὁ δοκεῖ ἔχειν* has the same force as *ὁ ἔχει*. In the Septuagint, Hist. Susan. 5, *οἱ δοκοῦντες κυβερνᾶν τὸν λαόν*, 'Those who were reputed governors of the people.' Wisdom xii. 27, *οἱ ἐδόκουν θεοῦ*. Eusebius writes of Almighty God, *δικαίωτατος εἶναι δοκεῖ*. See Lee on Inspiration, Lecture VI. p. 301.

This will help us to understand the last verse of the seventh chapter of the First Epistle to the Corinthians, which has often been gravely misunderstood, especially as the Authorized Version lends itself to the misunderstanding; 'And I think also that I have the Spirit of God' (*δοκῶ δὲ καὶ γὰρ Πνεῦμα Θεοῦ ἔχειν*), which may have the meaning, 'And I too am reputed to have inspiration of God.' Theodoret explains the words, 'Not mine are these sayings, but they are the words of the grace of the All Holy Spirit, Whose mouthpiece I am.' Certainly the Apostle cannot be intending to minimize his position and authority when, as above, he claims in the same Epistle that an acknowledgment of his divine commission is to be a test of the reality of the reputation of other teachers.

Almost at the same time that the First Epistle to the Corinthians was written, the Apostle wrote the Epistle to the Romans. In his argument he wished to emphasize the general principle that the binding power of law lasts so long as life lasts, and no longer. It is a symptom that the marriage law was uppermost in the Apostle's mind, that he uses this as the most complete and striking illustration of his argument. He writes as follows (Rom. vii. 1):—

'Are ye ignorant, brethren (for I speak to those that know law), that the law hath dominion over a man so long as he lives? For the woman that has a husband is bound by law to her living husband; but if her husband have died she is released from the law of her husband. Therefore so long as her husband is living she shall be called an adulteress if she be married to another man: but if her husband be dead, she is free from the law, so that she is not an adulteress, though she be married to another man. And so, my brethren, you too were put to death to the law by the Body of Christ, that you might be married to another, even to Him that was raised from the dead, that we may bear fruit to God.'

In this passage, though some may feel that there is a seeming confusion in the *argument*, yet there is no question that the illustration requires that marriage can only be dissolved by death, just as in the contemporaneous Epistle, that to the Corinthians, death is the only separation contemplated. The Apostle says practically that the Roman Christians knew that death was the only solvent of the marriage bond, and they *could know this only by the Law of*

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Christ; there is no other law known at the time from which the Apostle could take his argument or illustration.

The remarks of John Keble on this passage are so apposite that they are here given:—

'The points of comparison here [*sc.* in Rom. vii. 1-4] are plainly these two: *First*, that as nothing but death (and therefore no crime in either party) can undo the marriage bond; so it cost a kind of spiritual death—the death of Christ in His natural Body, and our sacramental partaking of His death by being made members of His mystical Body—before we could be released from the obligations of the law.

'*Secondly*, that as "Christ dieth no more," no soul which has ever been spiritually married to Him can ever be released from the obligation of that marriage. If the blessing be not accepted, the burden must be borne, and that eternally.

'In both the Apostle takes for granted that Christian marriage is indissoluble except by death; and that those to whom he is writing knew it to be so. He connects it in such wise with the mystical union that is betwixt Christ and His Church as to make the one the adequate type of the other, so far as that can be said of anything earthly. Marriage is lifelong, for it represents the Lord with the Church, and the Lord will be with the Church for ever.'

Thus far, then, we see the law laid down by S. Paul for his Gentile converts. This law depended either upon the Orders he had personally received from the Lord Himself at first hand, or upon the Apostle's deduction from that law under inspiration, in which case it was to be recognized as 'the commandment of the Lord.' This law, then, is as follows:—

A. In the case of mixed marriages, where one partner was a Christian and the other a heathen. In this case—

1. The Christian is to remain, if possible, with the heathen partner, in the hope of the conversion of the heathen.

2. If, however, the heathen partner will not consent to this, but demands a separation, then the Christian need not take it to heart, but must remain unmarried in the hope of a reconciliation.

B. In the case where both are Christian. In this case the only possible separation that is contemplated is death.

But in the passage from the Epistle to the Romans we

have the first written reference to the glorious mystery that the Church is the Bride of Christ, which is more fully developed in the Epistle to the Ephesians, which was written about four or five years after the Epistle to the Romans. To the Ephesian Church the Apostle wrote deeper doctrine, because he had been enabled, by a long stay amongst them, to advance them further into the deep teaching of Christianity. To them he writes as follows (Ephes. v. 22) :—

'Wives submit yourselves to your own husbands, as to the Lord : because the husband is the head of his wife, as also Christ is the Head of the Church, and HE is the Saviour of His Body. But just as the Church is subject unto Christ, so also let the wives be to their own husbands in everything. Husbands love your own wives, just as Christ loved the Church, and gave Himself for her, that He might sanctify her, having purified her by the font of water by the word, that He might Himself present to Himself the Church glorious, not having spot or wrinkle or any such thing, but that she should be holy and undefiled. So ought men to love their own wives as their own bodies : he that loveth his own wife loveth himself : for none ever hated his own flesh, but nourisheth and cherisheth it, just as the Lord does the Church ; because we are members of His Body from His Flesh and from His Bones. For this cause shall a man leave his father and his mother, and shall be joined to his wife, and the *two* shall become *one* flesh. This mystery is great ; but I speak with reference to Christ and His Church. Nevertheless do you, too, individually, each one of you, so love his own wife even as himself ; and the wife see that she reverence her husband.'

'The mystery [writes Mr. Meyrick, in *The Speaker's Commentary*] is the analogy between the married state and the spiritual union betwixt Christ and the Church. This had hitherto been a secret unrevealed thing, which was now first made clear, and therefore the holiness of marriage was comparatively unknown.'

But what can be clearer against Divorce and Polygamy, and Polyandry, than the revelation of the mystery that Christian marriage was upon earth the representation of the spiritual union between Christ and His Church ? Can Christ the Lord cast away, divorce His Bride the Church ? Away with the horrible thought ! Has Christ more Brides than one ? 'My Dove, my undefiled is one.' The answer is

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of old. Can we think that the Bride the Church has more
 heads than One? God forbid!

What a flood of light does this glorious passage throw
 upon whole tracts of Scripture in the Old and New Testa-
 ment! In the prophets, in Isaiah, Jeremiah, Ezekiel,
 Hosea, Malachi, there are many passages speaking of the
 Jewish Church being married to God; and, in consequence,
 idolatry or worship of false Gods is spoken of under the
 figure of fornication and adultery. 'Ephraim is joined to
 idols, let him alone.' But the prophets, while they speak
 of the Jewish Church being adulterous, still regard her as a
 true wife, who cannot free herself from her lord, but will
 ultimately be pardoned, and received back with an everlast-
 ing covenant. The whole of the sixteenth chapter of Ezekiel
 is of this spiritual meaning. God, in His love and mercy,
 chose out the Church, and espoused her, but she went
 astray after other 'lovers,' fell away like their forefathers,
 worshipped idols. For this she was to suffer severe
 punishment, but, upon repentance, she would be restored.
 There is a singular argument in the twentieth chapter of the
 same prophet, where, indeed, the Church is represented as
 saying that they would be divorced, 'We will be as the
 heathen, as the families of the countries, to serve wood and
 stone'; but this *could* not be; and God claims His right and
 authority over them, so that they should be punished for
 their going astray, and be brought back again. While
 Malachi, the latest of the prophets before Gospel times, has
 an earnest passage on the question of marriage and divorce,
 which is rendered in our Authorized Version, 'the Lord the
 God of Israel saith He hateth putting away,' that is, hateth
 divorce.

One word on this passage of Malachi in passing. It is
 true that the passage is obscure and has been variously
 interpreted. But, perhaps, the learned Pococke (after a
 very long discussion) gives the general meaning well. 'To
 us [he says], learning from Christ the true import of the
 Scriptures, the passage will be more absolutely a prohibi-
 tion from God both of divorce and polygamy. Take heed
 to yourselves as ye love your souls, that ye offend not by
 indulging your unbridled lusts in either of these kinds, and
 prevaricate against the sacred tie of wedlock, instituted by
 God for the joining one to one in an indissoluble knot of
 affection in legal manner.'

The implied condemnation of divorce and the promised

pardon of the adulterous Church, with the prophecy of full restoration of the Christian Church, prepared the way for the unequivocal condemnation of divorce and remarriage of either party, as an offence against the indissoluble union between Christ the Bridegroom and His Bride the Church. Do we not believe that now the union between Christ and His Church is so intimate that it cannot be dissolved? If so, must we not believe that the marriage union is of the same character? Does not this reflect light back upon the whole of the marriage question, and all its surroundings, in the Old Testament? Must we not think that this is why the Apostle in this passage traces all back to the prime ordinance of marriage in Genesis?

Remark how the Apostle quotes the Greek Authorized Version rather than translate the Hebrew afresh; and at the same time remark how this version is authenticated by our Blessed Lord's adoption of it, as recorded by S. Matthew and S. Mark (S. Matth. xix. 5, S. Mark x. 8). The Hebrew has, 'They shall be one flesh.' This is reaffirmed in the New Testament, with the special insertion of the limitation TWO. 'The *two* shall be *one* flesh.' At the Creation there was no need of such limitation in *language*, as there were but two persons, a male and a female. But when the Great Charter of Marriage is re-enacted, and the deep mystery therein contained is declared, the fact that there is a multitude of either sex seems to require the limitation, which is not omitted, 'the TWO shall be *one* flesh.'

This helps us to understand why such stress was laid upon the sins against marriage in the Old Testament. The curious researches of moderns reveal more and more the necessity of such continual warnings against such sins. 'Defile not 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' (Lev. xviii. 24, 25).

So also from S. Paul's words, still under consideration, we can understand the title Bridegroom, given to our Lord by the Baptist, and adopted by the Lord when He spoke of the Apostles as 'children of the bride-chamber,' and of Himself as the Bridegroom. This, too, shows that the Jews were quite prepared to understand the teaching conveyed in the title, and that the Hebrew Christians thoroughly

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the prophecy of full prepared the way for the and remarriage of the indissoluble union as Bride the Church. Can it be dissolved? If the original union is of the same kind as that which is light back upon the same its surroundings, in which that this is why it is traced back to the prime

The Greek Authorized Version renews afresh; and at the same time is authenticated by the words of S. Matthew (Mark x. 8). The

This is reaffirmed by the original insertion of the words 'of one flesh.' At the same time, in *language*, and a female. But this is re-enacted, and is declared, the fact seems to require that the two shall be one

Such stress was laid upon the New Testament. The more and more the Church has turned against such sins. 'I say unto you; and the iniquity thereof shall multiply against her inhabitants'

Under consideration, given to our Lord when He spoke of the 'side-chamber,' and so, shows that the teaching concerning Christians thoroughly

understood it, as forming part of Apostolic teaching, is seen not only from this passage of S. Paul, but from the title 'Bride' given to the Church in the Apocalypse.

From all this, then, we learn the extreme Sanctity of the Marriage Estate in the eyes of the Creator. We need not wonder, therefore, at the prominence given to the question in S. Paul's teaching; so that, though he only stayed three weeks in Thessalonica, he forewarned and testified that 'God was the avenger' of all sins against marriage. Such sins, indeed, are beyond the reach of man's interference. S. Paul, too, says he is only handing on the *General Orders* of the Commander-in-Chief, from whom personally he claims to have received his instructions at first hand. As we have seen, he is the first to put them in writing. There is no word in S. Paul's report of the law that would encourage the remarriage to a second partner during the lifetime of one that was separated for any cause.

Later on, after (as it would seem) S. Paul had written his Epistles, or most of them, there were records of our Blessed Lord's life and teaching committed to writing; and by a careful harmony of these records we may trace that on three occasions at least our Blessed Lord spoke on this important question. First of all, in His Sermon on the Mount, as recorded by S. Matthew; secondly, later on, as recorded by S. Luke; and, thirdly, in a passage where He was first questioned by the Pharisees, and afterwards by His disciples privately.

I. S. MATTHEW v. 31, 32.

'It hath been said, Whosoever shall put away his wife, let him give her a writing of divorcement: but I say unto you, That whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry a divorced woman committeth adultery.'

II. S. LUKE xvi. 18.

'Every man that putteth away his wife and has married another committeth adultery: and every man that has married a woman put away from a husband committeth adultery.'

III.

S. MATTHEW xix.

And the Pharisees came to Him, tempting Him and saying Is it lawful for a man to put away his wife for every cause?

And he answered and said unto them—

¶ Have ye not read that He Who made from the beginning made them a male and a female, and said, For this shall a man leave his father and his mother, and shall be joined to his wife, and the two shall be one flesh? So that no longer are they two but one flesh. That therefore which God hath joined together let not man put asunder.

¶ They say unto Him, Why then did Moses command to give a bill of divorcement, and to put her away?

He saith unto them, Moses for the hardness of your heart suffered you to put away your wives: but from the beginning it was not so. And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery, and whoso marieth one that is put away doth commit adultery.

S. MARK x.

And the Pharisees came to Him and asked Him, tempting Him, Is it lawful for a man to put away his wife?

And He answered and said unto them—

What did Moses command you? And they said, Moses suffered to write a bill of divorcement and to put her away.

And Jesus answered and said unto them,

For the hardness of your heart he wrote you this precept, but from the beginning of the creation He made them a male and a female. For this shall a man leave his father and mother, and the two shall be one flesh. So that no longer are they two but one flesh. That therefore which God hath joined together let not man put asunder.

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His disciples say unto Him, If the case of the man be so with his wife, it is not good to marry. But He said unto them, All men cannot receive this saying save they to whom it is given.

In these three passages that recorded by S. Luke is unequivocal, and of the same character as the witness of S. Paul. The marriage of man or woman, who has been divorced, with any other than the former partner, is adultery. There is no exception attempted, no exception recorded. S. Luke is said to have written his Gospel for the Gentiles, and more especially for the Greek Gentiles.

But remark in passing that the Lord does not speak of the second marriage of divorced persons from a moral or social point of view, but simply as a breach of the Seventh Commandment. It is adultery in God's sight. This too is traced to the inability of *man* to divide what *God* has made an unit. For it is not '*Those whom God hath joined*,' but '*That which*': the action of God has in some mysterious manner made man and wife one *Unit*; *man*, therefore, is powerless really to separate this unity; nothing but the action of God, as seen in *death*, can separate this. Man may mar and defile the unity; but, as S. Paul has solemnly said, God Himself is the avenger of all such offence, which man *cannot* set straight.

S. Mark, writing for the Gentiles, and specially the

S. MARK

And in the house His disciples continued to ask Him again of this. And He saith unto them, Whosoever shall have put away his wife and married another, committeth adultery against her; and if a woman shall have put away her husband and be married to another, she committeth adultery.

Latin branch of the Gentile world it is thought, gives no exception to the rule the Lord Jesus lays down *in the house* in private to His disciples. A man who divorces his wife at all, and marries someone else, commits adultery against his wife, as marring the unity which still exists in God's sight, though *man* has caused a separation. Similarly a woman who divorces her husband, and marries another man, commits adultery.

But S. Matthew introduces an exception (*except it be for fornication*). Remark, however, that this does not excuse remarriage with another woman; it excuses separation from the wife. Our duty must be reverently to enquire how this exception is to be reconciled with the unequivocal, unconditional condemnation of divorce by S. Paul, S. Mark, and S. Luke, or rather by the Lord Jesus as recorded by these inspired writers.

As S. Paul wrote before S. Matthew (in all human probability), we cannot say that the exception in S. Matthew was intended by S. Paul to be understood by his converts to be read into his representation of our Lord's Words. So that we might think that S. Paul's witness would remain the law for the Gentile Church, agreeing absolutely as it does with the two Evangelists whose Gospels are believed to have been written for the Gentile converts. This thought may help as to the true interpretation of the excepted case in S. Matthew.

For it is generally agreed that S. Matthew in writing his Gospel had specially in view the needs of the converted Jews; and the case of the adulterous wife being excepted here, and here only, may have reference to the law of Moses. We certainly find in S. Matthew that the first passage occurs in the midst of our Lord's clearing away from the various Commandments the lax interpretations which the perversity of men had introduced. In each case we have first the inadequate or erroneous interpretation recorded; then the true bearing and drift of the moral law in its stringency is asserted. In this matter of marriage, then, we should naturally expect the same: and so we find it.

'It was said, Whosoever shall put away his wife, let him give her a divorce.'

This was the lax rendering. Then follows the true drift of the law.

'But I say to you, Whosoever shall put away his wife (outside the question of fornication) causes her to commit

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First, then, we see that it is only the continuance of the marriage bond, even after the divorce (whether under the pretence of law or not), that can make the remarriage of the divorced woman, adultery. Next, remark that the Law of Moses regarded adultery in the wife as a case which demanded separation; for the wife was to be put to death, as well as her paramour. This case, therefore, had to be excepted from the general prohibition of separation: if all prohibition of separation were insisted on while still the Temple stood, before the full message of forgiveness of sins had been purchased by the death of the Cross, and proclaimed, then the separation by death of the adulterous wife would have been forbidden. But in each case, in which S. Matthew (the Evangelist to the Hebrews) records our Lord's words, this special exception is mentioned. Where the law of Moses was not binding—as, e.g. on the Gentile world—then the exception was not required; and in the writings for the Gentiles the exception does not occur, and is not mentioned. This interpretation does not restrict the word *πορνεία* to antenuptial impurity.

In the third passage, as given by S. Matthew and S. Mark, it is strikingly corroborative of some such interpretation that while to the Pharisees the exception is given, to the disciples in the house the law is unconditionally stringent.

There are, however, some five or six other interpretations which must be referred to.

One makes *πορνεία* equivalent to 'idolatry,' in which spiritual sense it is often used in the Book of Revelation. In this case the exception would be similar to the permission of S. Paul to allow the idolatrous heathen to depart.

Another restricts the word to antenuptial incontinence, as recognized in the Law.

Another interprets the word to be a special restriction of the word in Deuteronomy xxiv. 1, rendered 'unclean-ness,' the one cause for which divorce was allowed under the Law. In this sense it would cover any immorality of conduct, in respect of the Seventh Commandment.

Another would interpret the exception as referring to marriages which were null and void from the beginning as offending against some of those restrictions on marriage which are contained in the Book of Leviticus.

Another interpretation is from S. Augustine, who suggests that it would be a *greater* sin to dismiss the wife without this provocation, not that it would be *no* sin with this provocation to dismiss her, and marry another; for, he says, the Lord pronounced it adultery in either case—'Non quia et hoc adulterium non est, sed quia minus est.'¹

There still remains one interpretation, if it may be so called, which regards the exception as a kind of specimen of a class of causes for which divorce and remarriage are permissible.

Of this latter we may say that the human mind can persuade itself of anything. The law of God as revealed in the Bible ever allows and demands man's free choice, and in this matter of divorce this is remarkably exemplified. The law of Moses allowed divorce if the husband found 'some uncleanness' in his wife. The carnal Jew interpreted this to mean anything whatever which was the cause of displeasure; as Milton expressed it, 'a natural annoyance, defect, or dislike, whether in body or mind.' If a wife salted the porridge too much, the will of man saw in the little word of Moses' law, permission for dismissal. So this exception of our Lord as recorded in the Gospel for Hebrew Christians has been strained and extended nearly as wide by some. Milton, however, hesitates not to say, 'This saying of Christ, as it is usually expounded, *can be no law at all*, that a man for no cause should separate but for adultery, except it be a *supernatural law, not binding us as we now are.*'

Be this as it may, the position of the record of S. Matthew chronologically is of some value in argument. For chronologically it occurs between our Lord's *Order* as delivered by the hand of S. Paul, and His sayings as recorded by S. Mark and S. Luke. If, therefore, the earlier is to be explained by the later, S. Matthew must be explained by the unequivocal sayings in the later Gospels. If the later writer is to be supposed (as some would have us believe) to expect readers to introduce some qualification from the earlier, then S. Paul's Epistle is the earlier. But as we find that S. Paul, S. Mark, and S. Luke are recognized as having written for a different class of believers—viz. the Gentiles, who were not bound by the law of Moses—and all these three agree precisely in the law of Jesus Christ enunciated for His disciples, we may be right

¹ *De Conj. Ad. I. 9, Tom. vi. col. 391.*

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in assuming that in the record of S. Matthew, of sayings of our Lord which had in each case a special bearing on the law of Moses, there was intended to be a reference to that law as affecting the Jews (for whom S. Matthew wrote) so long as that law was in force and the Temple was standing, with which that law was identified.

There does not seem to have been any doubt about the Christian law of marriage until the Emperor became Christian. From that time there was a laudable attempt on the part of the Emperor to assimilate the civil law to the Christian law; and this was met by stretching and straining the Scriptural law to meet the restrictions of the civil requirements, so as to attempt a compromise between the Church and the world. This affected the seat of Empire in the East more than in the West, so that as Ayliffe in his 'Parergon' says: 'The Bishops for a long time did not govern themselves in this matter according to the Canons of the Church, but *in pursuance of the rules of the Imperial laws.*' Hence we find lax interpretations of early Canons. For example, the Greek Canonist, Theodore Balsamon, in the twelfth century, speaking of the Canon in the African Code which forbids the marriage of divorced persons as adulterous, writes: 'Remark that the 117th Novel of Justinian [N.B. a Royal and civil law] in the vii. title of the 28th Book has altered the law about dissolving marriage. The contents of the present Canon of Africa, being very much older, are obsolete.'

The Nestorian community, however, have all along refused to allow the remarriage of a divorced spouse, and this refusal would testify to the rule before they separated.

As will be seen, the English Church has maintained the binding character of the marriage tie, only allowing a divorce from the bond of marriage so as to permit another marriage, where some valid antecedent impediment has prevented true marriage. This has been the law of the English Church for some fifteen hundred years with scarce any, if any, variation.

It is most earnestly to be hoped that we shall be able to maintain 'that idea of marriage which Christ has brought into the world, and which He has set His Church to maintain and uphold against all those influences which are ever at work in a sinful world, to lower and debase it' (Abp. Trench). For we must set before our minds the great truth that 'Every offence against marriage is an antagonism

and a contradiction to the supreme Archetypal mystery of the Incarnation.' And while the consent of a man and a woman makes the union of marriage, it is the act of GOD alone that makes of that union, *unity*. Therefore, while the act of man may suspend the union, no act of man can destroy the *unity*, which can only be dispersed by the act of God who made it. How true, then, is the exclamation of the Apostle in this connection, 'He therefore that despiseth, despiseth not man, but God, who hath also given unto us His Holy Spirit.'

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II.

THE CANONS OF THE CHURCH.

'According to Evangelical and Apostolical discipline, neither a husband dismissed by a wife, nor a wife dismissed by a husband, may be married to another, but let them remain so, or be reconciled.'—*African Canon.*

- The Canons are mainly quoted, or translated from the edition of Labbe. The Canons of Arles are quoted from Bruns ('Canones : Berlin, 1839) from Mansi.

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II.

THE CANONS OF THE CHURCH.

I. THE APOSTOLICAL CANONS.

THE DATE of these is uncertain, and the various Canons are probably of various dates. This Canon is regarded as one of the most ancient. They are all probably Ante-Nicene.

Canon 48. *Εἴ τις λαϊκὸς τὴν ἑαυτοῦ γυναῖκα ἐκβαλὼν ἢ ἑτέραν λάβοι, ἢ παρ' ἄλλου ἀπολελυμένην, ἀφορίζεσθω.*

Si quis laicus uxorem propriam pellens, alteram vel ab alio dimissam duxerit, communionem privetur.

If any layman, having put away his wife, either take another or marry a woman divorced by another, let him be excommunicated.

This Canon is plain, and unmistakeable; but we shall see later how the Greeks evade its plain words.

2. THE COUNCIL OF ELVIRA (Eliberis).

DATE probably A.D. 305. Hardouin gives A.D. 313.

Canon 8. Item foeminae, quae nulla precedente causa reliquerint viros suos et alteris se copulaverint, nec in finem accipiant communionem.

9. Item foemina fidelis, quae adulterum maritum reliquerit fidelem, et alterum ducit, prohibeatur ne ducat: si duxerit non prius accipiat communionem nisi quem reliquit de saeculo exierit; nisi forte necessitas infirmitatis dare compulerit.

10. Si ea quam catechumenus relinquit duxerit maritum, potest ad fontem lavacri admitti: hoc et circa foeminas catechumenas erit observandum. Quodsi fuerit fidelis quae ducitur, ab eo qui uxorem inculpatam relinquit, et cum scierit illum habere uxorem, quam sine causa reliquit, placuit huic nec in finem dandam esse communionem.¹

¹ Labbe, *Concilia*, i. col. 971.

There are several various readings at the end of this Canon, as would be most likely, as the severity is terrible. Bruns (ii. 3) gives in his text 'in finem hujusmodi dare communionem.'

8. Women who abandon their husbands without previous cause, and couple themselves with others, are not to be communicated even at death.

9. A Christian woman, who has left an adulterous Christian husband, and is marrying another, is to be forbidden to marry: if she have married, she is not to be communicated until the death of the man she has left, unless mortal sickness compel it.

10. If an unbaptized woman be left by a Catechumen, and afterwards marry another, she may be admitted to Baptism: similarly with women Catechumens. If, however, a Christian woman be married by a man who has left a blameless wife, and she knows it, she is not to be communicated even at death (or she is to be communicated only at death).

The 65th Canon of this Council requires a cleric to put away an adulterous wife under penalty of not being communicated even on his deathbed.

In these Canons there is a distinction made between heathen marriages contracted before the knowledge of the Christian law, and Christian marriage.

3. COUNCIL OF ARLES (Arelatense).

DATE A.D. 314.

Canon 10. De his qui conjuges suas in adulterio deprehendunt, et iidem sunt adolescentes fideles, et prohibentur nubere, placuit ut in quantum possit consilium iis detur, ne viventibus uxoribus suis licet adulteris alias accipiant.

Canon 24. Placuit ut quantum potest inhibeatur viro, ne dimissa uxore vivente liceat ut aliam ducat super eam: quicumque autem fecerit alienus erit a catholicâ communionem.

Canon 25. Placuit ut mulierem corruptam clericus non ducat uxorem; vel is, qui laicus mulierem corruptam duxerit, non admittatur ad clerum.

10. Of those who detect their wives in adultery, and are young Christians, and are forbidden to marry, it was resolved that by all means they be counselled not in the lifetime of their wives, though adulterous, to take others.

24. It was resolved that by all means a man be restrained from thinking it lawful, during the lifetime of his dismissed wife, for him to marry another in addition; but whoever shall have done so shall be cut off from Catholic Communion.

25. It was resolved that no clerk marry a corrupt woman; and that none that had married such as a layman be admitted clerk.

The 24th and 25th Canons are given by Mansi (as recorded by Bruns, ii. 110) as belonging to this Council, and certainly the *quantum potest* of 24 explains the *quantum possit* of Canon 10. The *quantum potest* (as much as possible, or by all means) of Canon 24 does not weaken the effect of the Canon (as some would persuade us it does in Canon 10), for excommunication follows. Indeed, if this really be a Canon of the same Council of Arles, or even if it be the Canon of a later Council of the same place, it may well be taken to explain the 10th. It certainly would prevent any misconception of that Canon, as if the *quantum possit* implied that if the young man married after all persuasion to the contrary, the Church did not condemn him. It would rather imply that the Council enjoined the clergy to teach the existing law of the Church, which the long persecution, and the civil and social laxity, might have made dormant. There is wisdom in reviving a law gradually; and the *quantum potest* and *quantum possit* may refer to the advisability of a gentle manner of reintroducing stringency. A sudden tightening might endamage the matter and do more harm than good. In each Canon the dismissed, or divorced, woman is still called *wife*; which governs the Canon, and a second marriage is condemned as polygamous; 'aliam ducat *super eam*,' he must not marry another *in addition*.

4. COUNCIL OF TOLEDO (Toletanum I.)

DATE A.D. 400 (about).

Canon 17. Si quis habens uxorem fidelis concubinam habeat, non communicet: ceterum is qui non habet uxorem, et pro uxore concubinam habeat, a communione non repellatur, tantum ut unius mulieris aut uxoris aut concubinae, ut ei placuerit, sit conjunctione contentus; alias vero vivens abjiciatur donec desinat et per poenitentiam revertatur.

If a man who is baptized has a wife and a concubine, he may not communicate : but if a man has not a wife and has a concubine instead, he is not to be refused communion ; only that he must be satisfied to have one, wife or concubine, whichever he pleases. Otherwise he is to be excommunicated until he ceases to offend thus, and be restored by penitence.

This Canon is introduced to show how the Spanish Church dealt with the civil law. This law gave a legal status to concubinage. This was a permanent cohabitation of an unmarried man with an unmarried woman, resembling somewhat the so-called 'Morganatic' marriage, where the woman does not take the man's rank, and the man has no legal right over the children.

5. AFRICAN CODEX.

DATE A.D. 407 (or 397).

Canon 102. *Placuit ut secundum Evangelicam et Apostolicam disciplinam neque dimissus ab uxore neque dimissa a marito alteri jungatur, sed ita maneant aut sibimet reconcilientur : quod si contempserint, ad poenitentiam redigantur. In qua causa, legem imperialem petendum est promulgari.*

It was resolved that, according to Evangelical and Apostolical discipline, neither a man dismissed by a wife, nor a wife dismissed by a husband, may be joined to another, but let them remain so, or be reconciled. But if they despise this, they must be put to penance. In which case we must petition for an Imperial law to be promulgated and put in ure.

This is a renowned Canon, often referred to and re-enacted. The last clause, that a civil law should be petitioned for to enforce the Canon, introduces the first element of weakness. The later Greek Canonists take hold of this to show that the later civil law repealed the Ecclesiastical law.

Remark that the rule is claimed as laid down in the Gospels and Epistles. There is clearly no doubt in the mind of those who passed this Canon. They say that Gospel and Epistle both condemn the remarriage of a divorced person, without any condition whatsoever.

But, most unfortunately, they ask for Imperial sanction to their Canon.

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6. COUNCIL OF MILEVIS.

DATE A.D. 416 (about).

Canon 17. Re-enacts the African Canon word for word.

7. COUNCIL OF ANGERS (Andegavense).

DATE A.D. 453.

Canon 6. *Hi quoque qui alienis uxoribus, superstibus ipsarum maritis, nomine conjugii abutuntur, a communione habeantur extranei.*

Those who, under pretence of marriage, live with other men's wives during the lifetime of their husbands are to be held excommunicated.

This probably refers to marriage after divorce. Compare the words of S. Augustine, quoted in Canon of Troli, A.D. 909.

8. COUNCIL OF VANNES (Veneticum).

DATE A.D. 465.

Canon 2. *Eos quoque qui relictis uxoribus suis, sicut in Evangelio dicitur, excepta causa fornicationis sine adulterii probatione alias duxerint, statuimus a communione similiter arcendos, ne per indulgentiam nostram praetermissa peccata alios ad licentiam erroris invitent.*

Those who have left their wives, as it is said in the Gospel, except for the cause of fornication, without proof of adultery, and have married others, we decide are to be repelled from communion, lest sins passed over by our tenderness incite others to freedom of error.

This seems to connive at remarriage after divorce, following proof of adultery.

9. COUNCIL OF AGDE (Agathense).

A.D. 506.

Canon 25. *Hi vero saeculares qui conjugale consortium culpa graviore dimittunt, vel etiam dimiserunt; et nullas causas discidii probabiliter proponentes, propterea sua matrimonia dimittunt, ut aut illicita aut aliena praesumant; si antequam apud episcopos comprovinciales discidii causas dixerint, et prius uxores, quam iudicio damnentur, ab-*

jecerint ; a communione ecclesiae, et sancto populi coetu, pro eo quod fidem et conjugia maculant, excludantur.

Canon 25. These laymen who, by some grievous fault, are dismissing, or even have dismissed, their wives, and without credibly declaring any cause for divorce, are getting rid of their own marriages in order to venture upon unlawful or strange connections ; if they have cast away their wives before they have stated their causes for divorce before the Bishops of their Province, and their wives are judicially condemned, let them be excluded from the communion of the Church, and the holy congregation of the people, because they are bringing stains upon their own troth and marriage.

Milton, in his 'Tetrachordon,' quotes this Canon in favour of divorce and remarriage. But, on the face of it, there is not much evidence of any desire to encourage the *saeculares*, to form other marriages, even if their reasons for divorce were good and valid.

10. COUNCIL OF HERTFORD (Herudforense).

DATE A.D. 673.

Canon 10. Ut nulli liceat nisi legitimum habere conjugium ; nullus incestum faciat ; nullus conjugem propriam nisi ut sanctum Evangelium docet fornicationis causa relinquat : quod si quisquam propriam expulerit conjugem legitimo sibi matrimonio conjunctam, si Christianus esse recte voluerit, nulli alteri copuletur, sed ita permaneat [or praemaneat] aut propriae reconcilietur conjugii.

None must have other than a lawful marriage. None is to commit incest. None is to leave his own wife, unless, as the Holy Gospel teaches, for the cause of fornication. But if a man have driven out his own wife, joined to him in lawful marriage, if he really wishes to be a Christian, let him not be coupled to another, but remain so or be reconciled to his own wife.

The 'lawful marriage' excludes the concubinage allowed by the Council of Toledo.

It is said that 'this is a counsel rather than a rule of universal obligation' ; yet the sanction, 'if he really wishes to be a Christian,' implies that it is a Christian law, whatever the civil law might allow.

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11. APOSTOLICAL CONSTITUTIONS.

DATE uncertain.

Book III., Chapter I, about the middle.

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'If any younger woman, who has lived only a short time with her husband, and has lost him by death or any other occasion, and remains by herself, having the gift of widowhood, she will be found to be blessed.'

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On this Dr. Pusey has remarked, 'implying plainly that if she had not the gift she might marry.' But this is surely rather reading into the passage what is not to be found there. The words of the learned and level-headed layman John Walter Lea are so much to the point that I transcribe them. 'If by any other occasion only divorce for adultery had been meant, it would surely have been easier to say so. The words imply more than one such occasion, and I cannot see what warrant we have for so rigid a limitation. Yet, except for one "occasion," our Lord's express words most indubitably forbid all divorce, and *à fortiori* all remarriage. These words of the Constitution therefore, intimating a plurality of occasions, point to some, at least, in which remarriage must be prohibited by our Blessed Lord. We cannot prove that they point to even one in which it would be lawful. But, in fact, I am not at all convinced that they allow of it in any. Dr. Pusey says, "If she had not the gift [of widowhood] she might marry." But does not the Constitution say distinctly that she has the gift, and that by the very fact of her position? It does not say, "If she has the gift of continence." She has the gift of widowhood already (actual or virtual widowhood, which latter might arise from many other "occasions" besides death or divorce); if she abide in it she shall be blessed. The estate of "widowhood" is regarded as being in itself a δῶρον. Of those who have not that gift it says nothing, nor of those who, having it, do not abide in it. The actual possession is assumed. I do not see, speaking with diffidence, that we can make more of this than a general discountenancing of second marriage and sensual sin.'

Thus far the learned layman. There is no proof that in any case would another marriage be *lawful*. If the phrase 'any other occasion' mean this, then it must also imply that the imprisonment, captivity, desertion, &c., of the husband allowed of marriage, and this could hardly be allowed.

The second chapter of the Book commences thus:—

'Let not the younger widows be placed in the order of widows, lest under pretence of inability to contain in the flower of their age they come to a second marriage. . . . For you ought to know that once marrying according to law is righteous as being according to the will of God; but second marriages *after the promise* are wicked, not because of the marriage, but because of the falsehood. But to the younger women let a second marriage be allowed *after the death of their first husband*.'

No 'other occasion' here.

12. COUNCIL OF SOISSONS (Suessionense).

DATE A.D. 744.

Canon 9. Constituimus ut nullus laicus homo marito vivente suam mulierem alius accipiat; nec mulier vivente suo viro alium accipiat, quia maritus mulierem suam non debet dimittere, excepto causa fornicationis deprehensae.

'We ordain that no layman take a woman as wife while her husband lives: nor a woman take another husband while her own husband lives. Since a husband may not dismiss his wife, except for the cause of fornication.'

This Canon seems doubtful, for though the dismissal for adultery is seemingly acknowledged, the remarriage is forbidden unconditionally. It probably intends to forbid remarriage, though separation is allowed.

COUNCIL (?) OF VERBERIE (Vermeriense).

DATE A.D. 753.

This so-called *Council* was rather a 'National Assembly,' as Fleury calls it. He writes, 'King Pepin, in the second year of his reign, convened the Assembly of the Nation at Verberic.'¹ There are a good many laws about

¹ *Ecc. Hist.* vol. v. p. 120. London: 1732.

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marriage, but after one of these occurs the remark, 'Hoc ecclesia non recipit'; this may imply that the other provisions were received by the Church. Some are curious. Here is one : 3. 'If a priest have his granddaughter to wife, he must put her away, and be degraded. If another man have married her, let him also put her away. If he cannot remain unmarried, let him take another as wife. For it is blameworthy for another man to have to wife the relict of a priest.' The Canons (so called) show a wide divergence from the ideal of marriage set up by S. Paul.

Canon 11. 'If a man from some inevitable necessity has fled to another duchy or province, or has followed his leader to whom he owes fealty, and his wife, though able, refuses to follow him, she shall remain unmarried so long as her husband, whom she has not followed, is alive : but her husband may take another wife, but *do penance* for it.'

Fleury sums up other Canons : 'He who hath committed incest with his daughter-in-law, mother-in-law, or sister-in-law, or with his wife's cousin, shall never marry her, or any other ; and the woman guilty shall be subject to the like penalties : but the innocent party may marry again, that is' (adds Fleury, to soften matters) 'after the Death of the other. . . . Servitude makes marriage null ; so that he who marries a woman that is a slave, supposing her to be free, may marry another.'

Canon 5. 'If a woman plots the death of her husband with other men, and in self-defence he kills one, and can prove it, he may divorce his wife, and, if he will, he may marry another.'

This last Canon is entered in the *Corpus Juris*.¹ But the words 'after the death of his wife' are added ; and Fleury adds them from the *Corpus*, but without authority.

13. COUNCIL OF COMPIÈGNE (Compendiense).

DATE A.D. 757.

This also was more of a National Assembly, but as the Bishops were present, and consenting, it is spoken of as a Council. The legates whom the Pope had sent into France were present, and assented to some of the Canons. 'Georgius Episcopus Romanus consensit.'

¹ *Decret. Greg.* lib. IV. tit. xix. cap. 1.

Many of the provisions of Verberie are repeated. In some other cases of incest mentioned the innocent party may marry again.

Canon 13. 'If a man have divorced his wife, and have given her leave to enter a monastery for the sake of religion, or to take the veil outside a monastery for the sake of God, the man may take a lawful wife. Similarly in the case of a woman. George consented.'

Canon 16. 'If a leper have a healthy wife, if he is willing to give her leave to take (another) husband, the woman may take another if she wishes. Similarly in the case of a woman.'

Canon 18. 'If men escape to another country on account of some family feud, and dismiss their wives, neither the men nor the women are to take (other) consorts. George consented.'

CAPITULARY OF AIX-LA-CHAPELLE (Aquisgranense).

DATE A.D. 789.

Charlemagne succeeded his father in 768, and he at once endeavoured to convert the heathen about him, and to raise the Christians from semi-barbarism and semi-heathenism to a higher Christian life. We all know how he sent to the English Church to help him, and how the great Universities of France owe their existence or their excellence to S. Anselm, the English Churchman.

Charlemagne, with the assistance of Bishops, drew up 'Capitularies,' which were issued with his authority, but are reckoned amongst Ecclesiastical documents; the Capitulary of Aix-la-Chapelle will show a desire to approximate the civil law to the Christian, and not, as in his father's time, *vice versa*.

Chapter 43. 'It is ordered in the African Council that neither a wife divorced from a husband take another while her husband is alive, nor a man take another wife while his first wife is alive' (then follows the Canon given above, in 5).

14. COUNCIL OF FRIULI (Forojuliense).

DATE A.D. 791.

This Council was held in the reign of Charlemagne, and was presided over by a Bishop, who found great favour with the King because of his learning and piety.

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The 10th Canon of the Council is somewhat long, but the terms are as follows:—'Though a man break the bond of marriage on account of fornication, he may not marry again while his wife lives, adulteress though she be; and the adulteress must never marry again. For though it is read in the page of the holy Gospel that a man might dismiss his wife only for fornication, it is not read that it was allowed to the man to marry another while she lived; and it cannot be doubted that it is altogether prohibited' ('prohibuisse quidem modis omnibus non ambigitur').

15. COUNCIL OF ROME.

DATE A.D. 826.

Canon 36. Nulli liceat excepta causa fornicationis adhibitam uxorem relinquere et deinde aliam copulare; alioquin transgressorem priori conventi sociari conjugio.

'No man may leave his acknowledged wife, except for the cause of fornication, and then marry another: otherwise it behoves the transgressor to be joined to the first marriage.'

This implies permission to 'the innocent party' to marry again, though it does not give permission in so many words.

16. COUNCIL OF ROME.

DATE A.D. 853.

This Council re-enacted the Canons of 826 with some additions. The 36th Canon was not altered, though a few words were added at the end.

17. COUNCIL OF TOUL (Tullense).

DATE A.D. 860.

This Council directed Archbishop Hincmar, of Rheims, to write a letter in their name to the two Metropolitans of Aquitaine about the marriage of one Count Stephen and the daughter of Count Raimond. The whole letter is on the indissolubility of marriage: it occupies nineteen columns of folio, but the following are extracts which will show the drift:—

'This union is preserved in Christ and the Church, that the living with the living can be separated by no divorce for ever in the City of our Lord, in His holy Mountain, that is, in the Catholic Church.

'Wherefore those who are lawfully coupled by marriage cannot be separated except for the cause of fornication; and those who are separated for the cause of fornication must either remain unmarried or be reconciled, as the authority of the Gospel and the Epistles teaches, and the *African Synod* have defined.' The African Canon is then quoted as above.

'Hence it is clearly seen that, just as if the Sacrament of Baptism be once received, by which each of the faithful is incorporated into Christ in the unity of the Catholic Church, after this it is not lost by any cause; so, also, the bond of marriage, lawfully celebrated, remains indissolubly knit, though it may seem to be separated for fornication or any other cause.'

The judgment is learnedly supported from Canon and patristic authorities.

18. COUNCIL OF AIX-LA-CHAPELLE III. (Aquisgranense).

DATE A.D. 862.

This Council was called on account of the desire of Lothaire to be divorced from his wife Thietburga. They appointed two of their number to resolve this question: 'Is it lawful for a man to divorce his wife and to marry another in the lifetime of the first?' 'The two worked all night' ('nocturno actum tempore'), 'and each handed in his report, and all the Council applauded, and with one accord gave thanks to God.'

The report fills about nine columns of folio, and the conclusion is, 'We contend that he of whom we have to speak must either remain unmarried or be reconciled to his wife, if, at least, he wishes to render obedience to the Sacred Scriptures or the authority of the Fathers.' The Apostolic Canon, the African Canon, &c., are quoted to bear this out.

This, then, is the decision of the Council, who, however, decreed that Lothaire's marriage was null and void from the beginning, so that he was free to marry again.

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19. COUNCIL OF NANTES (Nannetense).

DATE uncertain, generally placed at the end of the ninth century, but Sirmond says that, if any one thinks it of the seventh century, he is at liberty to do so.

Canon 9. If a man's wife have committed adultery, and this have been discovered, and made public by the husband, he may divorce his wife, if he likes, for the cause of fornication; and she must do public penance for seven years. But her husband must on no account take another during her lifetime. If he wishes to be reconciled to her, he may, but he must do penance with her; and, having fulfilled the penance, after the seven years they may come to communion.

20. IRISH SYNOD.

DATE unknown, called after S. Patrick, but without likelihood.

Canon 26. Hear the Lord saying, He that is joined to a harlot is one body: again, Let the adulteress be stoned—that is, let her die for this offence—that she may fail to increase, who does not fail to commit adultery: again, If the woman have become an adulteress, is there any return to her first husband? again, It is not lawful to dismiss a wife except for fornication, as if He would say he may do it for this, therefore if a man marries a second wife as if the first were dead, let them not forbid it.

Whoever drew up this Canon had not verified his quotations. The references seem to be to 1 Cor. vi. 16, Leviticus xx. 10, or S. John viii. 5—for the law said nothing about stoning—Jeremiah iii. 1, S. Matthew xix. 9. But the passage in Jeremiah would certainly excite the hope that under the Gospel dispensation there might be reconciliation. The phrase 'Audi Dominum dicentem' would not necessarily refer to our Blessed Lord; it probably means no more than the prophetic 'Hear the word of the Lord,' though the Vulgate generally has 'Audi verbum, (or) vocem, (or) sermonem, (or) consilium, Domini.' Still, we may say that the Canon would have been more regarded if the argument had been omitted. The argument seems to be that, as Scripture said that the adulteress was not to be allowed to live, and, also, that she was not to return to her first husband after a second legal marriage, therefore a Christian man is to treat an adulterous wife as if she were

dead; he is not to be reconciled to her, and to marry another if he pleases.

21. COUNCIL OF WORMS (Wormatiense).

DATE A.D. 868.

Canon 63 deals with certain gross cases of incest and adultery. But only the first forty-four Canons are certain to belong to this Council. Still, this Canon permits re-marriage to the woman in a gross case of incestuous adultery by her husband before his marriage with her. It implies that the wife must leave her husband because of his antenuptial incest with two who were not related to her.

22. COUNCIL OF TRIBUR (Triburiense).

DATE A.D. 895.

Canon 36. Deals with the question of concubines. A woman that is a slave may be a concubine, and a free woman may marry a man that has a concubine. But if the slave woman have been made free, and the man have lawfully married her, he must keep her on [as wife], except for the cause of fornication; and so long as she lives he must not marry another.

Canon 41. If a man marries and cannot consummate the marriage, and his brother defiles his wife, they are to be separated, and neither may have the same woman to wife. But after penance they may marry. (It is not specified who are here intended; probably all three, each of the brothers and the woman.)

Canon 46. If an adulterous wife, in dread of being put to death by her husband, escape to the Bishop, the Bishop is to protect her. The husband is not to marry another so long as she lives.

23. COUNCIL OF TROLI (Troslejanum).

DATE A.D. 909.

The decisions of the Council are in the form of chapters, which are not very concise. Chapter VIII. quotes the 'laws of the Emperor'; one quotation has a long extract from S. Augustine, which is adopted. In it occur the following words:--

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fornication, and the husband so wills it, let her be divorced ; but another wife is not to be married during her lifetime. And, men, do not keep wives whose former husbands are still alive, for such marriages are adulterous.

Another COUNCIL OF TROLI.

DATE A.D. 927.

At this Council a Count did open penance for having married again during the lifetime of his first wife.

24. COUNCIL OF EANHAM.

DATE A.D. 1009.

Canon 8. . . . Let no Christian have a divorced woman for a wife ; nor take another wife, whilst he has one, but *so long as she lives* let her be the only one, if he have really cared for the law of God and have saved his soul from the fires of hell.

This seems plain enough.

25. COUNCIL OF BOURGES (Bituricensis).

DATE A.D. 1031.

Canon 16. Those who send away their lawful wives, without the cause of fornication, may not take others while the former live, nor wives husbands ; but let them be reconciled.

It is generally thought that this indirectly allows the so-called 'innocent' husband or wife to remarry. Such permission is certainly at most indirect.

26. COUNCIL OF LIMOGES (Lemovicensis).

DATE A.D. 1031.

This Council was almost a continuation of the former, with nearly the same Bishops. The Canons of Bourges were read and confirmed, and none others were passed.

27. COUNCIL OF ROUEN (Rotomagense).

DATE A.D. 1072.

Canon 17. No man whose wife has taken the veil may ever marry another while the first lives.

Canon 18. If the wife of a man who has gone on a

pilgrimage, or otherwise, shall have married another man until such time as she have certain information of the death of the first, let her be excommunicated until she have made due satisfaction.

The first of these Canons contradicts or reveals the 13th Canon of Compiègne, A.D. 757 above.

The following is a summary of the conclusions arrived at in the preceding pages. For the reasons the reader is referred back to:—

1. Apostolical Canons	Second Century.	Prohibit remarriage
2. Elvira A.D.	305	Prohibits
3. Arles "	314	Prohibits
4. Toledo "	400	
5. African "	407	Prohibits
6. Milevis "	416	Prohibits
7. Angers "	453	Prohibits
8. Vannes "	465	Non-committal
9. Agde "	506	Non-committal
10. Hertford "	673 (<i>English</i>)	Prohibits
11. Apostolical Constitutions. (?)		Not to the point
12. Soissons A.D.	744	Probably prohibits
Verberie (<i>civil</i>) "	753	Allows
13. Compiègne "	757	Allows
Aix-la-Chapelle (<i>civil</i>) "	789	Prohibits
14. Friuli "	791	Prohibits
15. Rome "	826	Probably allows
16. Rome "	853	Probably allows
17. Toul "	860	Prohibits
18. Aix-la-Chapelle "	862	Prohibits
19. Nantes "	(?)	Prohibits
20. Irish "	(?)	Allows
21. Worms "	868	Allows
22. Tribur "	895	Prohibits
23. Troli "	909	Seemingly prohibits
24. Eanham "	1009 (<i>English</i>)	Prohibits
25. Bourges "	1031	Probably prohibits
26. Limoges "	1031	Probably prohibits
27. Rouen "	1072	Prohibits

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III.

THE FATHERS OF THE CHURCH.

*καθαρόν οὖν τὸν γάμον, ὡς περ τι ἱερόν ἄγαλμα, τῶν
μυιαινόντων φυλακτέον.—S. Clement of Alexandria.*

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III.

THE FATHERS OF THE CHURCH.

I. HERMAS, A.D. about 100 (*Roman*).

* I said unto him [*i.e.* the Angel of Repentance who appeared to him in a vision] Sir, if a man should have a wife that is faithful in the Lord, and shall catch her in adultery, shall a man sin that continues to live still with her? And he said unto me, As long as he is ignorant of her sin, he commits no fault in living with her; but if a man shall know his wife to have offended, and she shall not repent of her sin, but go on still in her fornication, and a man shall continue nevertheless to live with her, he shall become guilty of her sin, and partake with her in her adultery. And I said unto him, What therefore is to be done if the woman continues on in her sin? He answered, Let her husband put her away, and *let him continue by himself*. But if he shall put away his wife, and marry another, he shall also commit adultery. And I said, What if the woman that is so put away shall repent, and be willing to return to her husband, shall she not be received by him? He said unto me yes; and if her husband shall not receive her he will sin; and commit a great offence against himself. But he ought to receive her though an offender, if she repents; only not often. For to the Servants of God there is but one repentance. And for this cause a man that putteth away his wife ought not to take another, *because she may repent*. This act is alike both in the man and in the woman. Now they commit adultery, not only who pollute their flesh, but who also make an image. If therefore a woman perseveres in anything of this kind and repents not; depart from her and live not with her, otherwise thou also shalt be partaker of her sin. But it is therefore commanded that both the man and woman should remain unmarried because such persons may repent. Nor do I in this administer any occasion for the doing of these things so: but rather that whoso has offended should not

offend any more ; but for their former sins God, Who has the power of healing, will give a remedy : for it is He Who can do all things' (lib. II. Mandat. iv. 1). The translation of Archbishop Wake is given as sufficiently accurate (1693, p. 374).

Here, then, the command is positive ; and when Dr. Pusey says that Hermas 'peremptorily calls' the marriage of either divorced party, during the lifetime of the other, 'adultery,' he is perfectly right. It will be well to remark the difference between this passage and the following on the marriage of the ~~divorced~~.

widowed

'I said, If a husband or a wife die, and the party which survives marry again, does he sin in so doing? He that marries (says he) sins not. Howbeit if he shall remain single, he shall thereby gain to himself great honour with the Lord.' (Ibid. 4, p. 379.)

While there is a counsel, or advice, here given, it is quite different from the 'peremptory' forbidding of the marriage of either party to a divorce.

2. S. JUSTIN MARTYR, A.D. 140 (*Asiatic*).

In his first Apology (cap. 15) he gives the Emperors a brief summary of the Lord's moral precepts, and begins thus :—

'Concerning chastity, He uttered such sentiments as these : Whosoever looketh upon a woman to lust after her, hath committed adultery with her already in his heart before GOD. And, If thy right eye offend thee, cut it out ; for it is better for thee to enter into the kingdom of Heaven with one eye, than, having two eyes, to be cast into everlasting fire. And, Whosoever shall marry her that is divorced from another husband, committeth adultery. . . . So that all who by human law are twice married, are in the eye of our Master sinners, and those who look upon a woman to lust after her.'

The translation of Mr. Marcus Dods, in Clark's 'Ante-Nicene Library,' is followed (p. 18) as sufficiently faithful. Mr. Dods gives the note '*Twice married*, lit. : contracting a double marriage. Of double marriages there are three kinds : the first, marriage with a second wife while the first is still alive, and recognized as a lawful wife, or bigamy ; the second, marriage with a second wife after divorce from the first ; the third, marriage with a second wife after the

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death of the first. It is thought that Justin here refers to the second case; i.e. that of marriage after divorce. And rightly so; for if he was not referring to this, there would be no special reference in his quotation of our Lord's words which would be applicable. That this was no private opinion of S. Justin, but the received doctrine of the Church, is proved by his challenging the Examination of the Emperors into his statements.

3. ATHENAGORAS, A.D. about 177 (*Athenian*).

'For we bestow our attention, not on the study of words, but on the exhibition and teaching of actions—that a person should either remain as he was born, or be content with one marriage; for a second marriage is only specious adultery. For whosoever puts away his wife, says He, and marries another, commits adultery; not permitting a man to send her away whose virginity he has brought to an end, nor to marry again.'

The translation in Clark's 'Ante-Nicene Library' is adopted (chapter xxxiii. p. 418). It will be remarked that Athenagoras quotes our Lord's precept without any excepting clause, as if he did not regard that excepting clause to apply to the Gentiles. It is true that he condemns the remarriage of the widowed under the name of specious, or plausible, adultery. We can understand that the high teaching of the New Testament would give rise to this opinion, which is logical; were it not for the express permission of such marriages in S. Paul's writings.

4. S. CLEMENT of ALEXANDRIA, A.D. about 192 (*Egyptian*).

'Now that Holy Scripture counsels marriage and allows no release from the union is expressly contained in the law, "Thou shalt not put away thy wife except for the cause of fornication"; and it accounts it to be adultery to marry a second time, in the lifetime of the other who has been divorced.'

Here, then, is the prohibition to separate, which confirms the bond; and there is the prohibition to marry after separation, which also confirms the bond. He then gives the main cause for this; he regards it as giving space and opportunity for repentance.

¹ 'Stromat.' lib. II. cap. xxiii., ed. Potter, 1715, p. 506.

'He that taketh to wife a divorced woman, committeth adultery. He says: for if a man divorce his wife, he maketh her an adulteress, that is, he compelleth her to commit adultery. Not only is he who divorced her answerable for this, but he who received her into his house since he offers the woman an occasion to sin. For if he would not receive her, she will return to her husband (id. p. 507).

Thus far then, at least, there is no symptom that the Church in any way tolerated remarriage in either party to a divorce during the lifetime of both. Some have thought that Tertullian was inconsistent.

5. TERTULLIAN, A.D. 200 (*African*).

The remarkable point about the evidence of Tertullian is this: that when Dr. Pusey, in a note in his translation of Tertullian in the 'Library of the Fathers,' argues that Tertullian 'allows of marriage after divorce,' John Keble, ὁ μακάριος, wrote against his friend and his note. 'I am compelled,' he writes, 'to demur to the interpretation (high as the authority is on which it stands whereby Tertullian is supposed to sanction marriages after divorce.' In reading the Canons and the Fathers, the supposed sanction for such marriage is often a mere 'reading between the lines'; or sometimes a taking for granted that where divorce, or *repudium*, or separation is spoken of as allowable, this necessarily implied a breach of the marriage bond, so as to allow of remarriage with another without sin. 'But the word *divortium* need not imply license to remarry; and Tertullian, as many after him, might mean that the saying in S. Matthew, by which our Lord confirmed the limitation made by Moses *in respect of Divorce properly so called*, should be taken as an indication of his mind to set the same limit to the right of *separation short of divorce*.' Mr. Keble's argument covers eight pages.

Tertullian writes, 'I have but just now, best beloved fellow servant in the Lord, traced out for thee, as well as I was able, what course should be followed by a holy woman, when her husband is, by whatever hap, taken away. Let us now turn to the next best counsel, out of regard to human infirmity, the examples of certain women warning

¹ Vol. i. p. 431 *sq.*

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Here the translation by Dr. Pusey is taken, as he founded upon this passage his note affirming that Tertullian and the early Church allowed 'of marriage after divorce.' It is rather difficult to see how this could be asserted; for, first of all, Tertullian cites the examples of these women as a *warning*, as something to avoid, as having violated Christian precept. If Dr. Pusey's argument holds, that 'Tertullian here, not less explicitly because incidentally, allows of marriage after divorce,' it must also hold good that Tertullian explicitly sanctioned marriage with a heathen. If he regarded (as it is clear that he does) marriage with a heathen, which he speaks of as having taken place, as wrong and to be condemned, then he cannot be said to allow of marriage after divorce. It would seem that he mentioned both as having taken place, as to be regarded as examples to be avoided. It may be said that he seems to regard the marriage of such a woman as worse if it take place with a heathen than otherwise, but this is about all that can be said.

The remarks of Mr. Keble here seem so very appropriate that they are given:—'At the beginning of his second book *Ad Uxorem*, in warning his wife against a course to which he thought she might be tempted after his death, he makes mention of "certain women who, when by divorce" (which, be it observed, might be quite involuntary on their side;—it might be a case of the unbeliever departing;—) "or by a husband's death, an occasion of continency was offered, had not only thrown away the opportunity of so great a good, but even in marrying again had not chosen to remember the rule, that first and chiefly they should marry in the Lord." I cannot see that this expresses any permission of marriage after Divorce, any more than marrying an unbeliever. No doubt both were possible by the secular law, but for anything that appears here, the one might be as uncanonical, as censurable, as contrary to S. Paul's rule, as the other.'

The other passages alleged from Tertullian are, all of them, from treatises written after he had lapsed into

¹ *Ad. Uxor.* II. 1.

heresy, but there is only one which does not unequivocally condemn marriage after divorce.

In his treatise *De Monogamiâ*, the ninth chapter, he takes it for granted that there can be no divorce, and he argues against the Church for allowing second marriage while condemning marriage after divorce. He felt as Athenagoras did, that one and one only marriage was to be tolerated for man and woman. In this chapter he has the following:—speaking of the Roman civil law he says:—

‘They, while they do not divorce, form adulterous connections: we, though we divorce, will not be allowed even to marry.’

That is, the divorce is only one *a mensâ et thoro*, and not *a vinculo*.

In the Fourth Book of his treatise against Marcion in the 34th chapter, another passage occurs. Tertullian is arguing against Marcion, who alleged certain passages from S. Luke’s Gospel (the only Gospel which Marcion accepted) as contrary to the Old Testament. In the passage in question Marcion says that the Lord’s teaching about divorce is contrary to that of the Law and Moses. Tertullian answers that he will not allege that passage in S. Matthew, which would disprove this, but he will take S. Luke’s account.

‘I say that He forbade divorce with a condition, if a man put away his wife in order to marry another . . . For he who marries one unlawfully put away is as much an adulterer as if she were not put away at all. For marriage which is not duly broken remains. And while marriage remains to remarry is adultery. Thus if He prohibited a man to put away a wife conditionally, He did not prohibit divorce altogether. And what He did not altogether prohibit, He permitted in other cases where the cause of prohibition ceases.’

The argument is strained, because there is some special pleading involved, so that it is not altogether to be wondered at that the passage is explained both ways. Mr. Keble says, ‘The course of the argument is somewhat perplexed; but is it not on the whole tolerably clear that the Divorce which it recognizes does not go beyond the *χωρισμὸς* in 1 Cor. vii. 11? On any other supposition it seems utterly irreconcilable with the citation from the treatise *De Monogamiâ*, which immediately precedes the

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present quotation. It would seem as if the uncertainty of the utterance in this particular passage arose from the necessity of maintaining what must be regarded as an erroneous position, instead of maintaining that the requirements of the Christian life are higher than those required of Jewish hardheartedness.

The next passage is remarkable for the great variety of reading, which introduces great change of meaning. The passage is from the treatise *De Exhortatione Castitatis*, chapter iv. In the Paris Edition of 1675 it is as follows:—

‘But neither in the Gospel, nor in the Epistle of Paul himself, can you find that the separation of the marriage tie is permitted by the command of God. Whence one thing is confirmed to be held, that what is not found to be permitted by the Lord is excused.’

This last sentence seems strange, therefore it cannot be wondered at that there is some variation. The text of Oehler, 1853 (vol. ii. p. 743) is as follows:—

‘But neither in the Gospel, nor in the Epistles of Paul himself, can you find that the *iteration* of marriage is permitted (*iterationem* instead of *separationem*) by the command of God. Whence one thing is confirmed to be held, that what is not found to be permitted by the Lord is *acknowledged to be forbidden*’ (*agnoscitur interdictum* instead of *ignoscitur*).

Some manuscripts have *rationem* instead of ‘*iterationem*’ or ‘*separationem*,’ as if the scribe was uncertain. However, the only meaning can be that marriage after divorce is forbidden, for S. Paul distinctly allows, nay, in some cases recommends, the second marriage of widowed spouses.

Again, in his treatise on Modesty, chapter xvi., there is a passage as follows:—

‘In the meantime also in prohibition of divorce, instead of it he maintains either continuance of widowhood, or else peaceful reconciliation, by the Lord’s command against adultery: since, “Whosoever hath sent away his wife, except because of adultery, maketh her to commit adultery, and he that marries a woman sent away by her husband committeth adultery.”’

Of all these passages, the first alone was written by orthodox Tertullian; in that he speaks of the examples of divorced women marrying again as examples to be avoided as much as Christian women marrying heathen men. The others are all written after he became a heretic. But in

these the only symptom of his regarding marriage after divorce as tolerable is in a passage where he is striving to maintain an indefensible position; and there, too, the 'divorce' recognized need not include permission to marry again. If it be taken to include this, then Tertullian contradicts himself.

6. ORIGEN, A.D. 245 (*Egyptian and Syrian*).

In his homilies on S. Matthew,¹ Origen has a long passage on the question of divorce, and marriage after divorce; two or three sentences will be sufficient for our purpose.

'But now, contrary to Scripture, even some of the rulers of the Churches permitted a certain woman to marry, during the lifetime of her husband, acting contrary to Scripture, in which it has been said, "A woman is bound so long as her husband liveth," and again, "Then the woman who marries another man in her husband's lifetime, shall be called an adulteress." Yet not altogether without excuse, for it is likely that this license was permitted in comparison of worse things, *though contrary to what from the beginning was enacted as law and written as Scripture.*' And a little later on, § 24, p. 649: 'But just as a woman is an adulteress, even though she seem to be married to a man, if her former husband be yet alive; so also a man who seems to marry a divorced woman, does not so much marry according to our Saviour's decision, as live in a state of adultery.'

The testimony of Origen is valuable, for it covers Alexandria, the Christian Metropolis of Egypt, and also Syria, where Origen worked the latter part of his life. He says that when some Bishops had permitted the marriage of a divorced woman, it was contrary to law and Scripture from the beginning of Christianity. Origen mentions this case as exceptional and surprising, and only tolerable as in that case intended to prevent worse sins. He says distinctly that in his view of Christ's law, the marriage of either party to a divorce with another during the lifetime of both is adultery. He also says that this was so from the beginning.

This is also valuable as showing that the exception recorded by S. Matthew was not regarded as allowing

¹) vol. iii. p. 647.

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remarriage after divorce to Christians. It is certainly most remarkable that we cannot find any trace that the exception mentioned in S. Matthew was regarded as in any way affecting the unconditional condemnation of such 'seeming' or pretended marriages (as Origen calls them). This surely would imply that there was some traditional mode of interpreting S. Matthew, which was tacitly accepted. Had there been no such tradition we might expect some reference to the seeming discrepancy between the Evangelists.

Here, then, it will be well to make a pause, because the muddy stream of civil policy from this time begins to soil the pure flow of Christian tradition. The Fathers thus far testify to the tradition of Egypt, Syria, Athens, Rome, and perhaps Asia Minor. Their testimony is well summed up in what is called 'the forty-seventh Apostolical Canon,' which is as follows:—'If any layman having put away his wife marry another, or marry a woman divorced by another, let him be excommunicated.'

In the year 314 A.D. there was issued the famous Edict of Milan, and it began to be popular and fashionable for men to 'call themselves Christians.' From this time we can trace an ebb and flow of Christian law: there was an attempt to relax the strictness of Christianity to accommodate semi-heathen morals, while at the same time there was an endeavour to make the heathen law more strict to accommodate relaxed Christian law. This seems to be the true explanation of the variation which from this time begins to be felt.

Tradition begins to lose its force: the great Saints of the fourth and fifth centuries introduce (quite rightly) intellectual argument, which gradually takes the place of traditional teaching, until it becomes difficult to separate the one from the other.

7. LACTANTIUS, A.D. cir. 320 (African).

Bishop Bull says of Lactantius that he was rather a rhetorician than a theologian, and was never received amongst the doctors of the Church. He was a Court divine, and was so imperfectly informed that he uses language at times which may be heretical, but which probably was not intended so to be. He was the tutor to Constantine's son, Crispus.

His remarks on the subject under consideration are as follows :—

'For it is not with us, as is the method of public law, that a woman alone is adulterous who has another beside her husband, but the husband, even if he has many women, is free from the charge of adultery. But the Divine law so joins together by an equal law two persons into marriage, that is into one body, that he is reckoned adulterous who ever have wrenched asunder the compacted body.' And again, later on :—'Lest anyone should think that he can defeat the purpose of the Divine precepts, there are added (that all cavilling and occasion of fraud be put out of question) that he is an adulterer who has married a woman put away from her husband ; as also he who, except for the crime of adultery, has put away his wife to marry another ; For God would not have the body dissevered, and wrenched asunder' (Book vi. § 23).

In the Epitome of the same book he writes :—'As a woman is bound by the bonds of chastity to desire no other, so let the husband be bound by the same law, since God hath joined together husband and wife in the union of one body. On this account He has commanded that the wife shall not be put away except after conviction of adultery : that so the bond of the marriage covenant may never be dissolved, unless unfaithfulness have broken it' (§ 66).

On the former of these passages Dr. Pusey remarks that 'Lactantius thinks Scripture admits it [*i.e.* marriage afresh after divorce] in the case of the man ; about the woman he is silent.'

The reader can judge for himself of the accuracy or inaccuracy of this remark. Dr. Pusey does not quote the words, but only gives the reference. Without reading between the lines the passage seems to require the same law for both husband and wife ('*pari jure conjungit*'), and does not say that either may remarry. The passage is as silent about the man as about the woman with respect to remarriage. It might as well be argued that because he says that 'he is an adulterer who has married a woman put away from her husband,' whether she be an innocent party or not ; therefore the divorced woman is not an adulteress, though the man to whom she is married is an adulterer. He certainly intimates that both are bound alike, and if the bond is broken, it is broken for both.

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As he writes:— 'As a man has chastity to desire no more than the same law, since he is married and wife in the union, he is commanded that the same law after conviction of adultery, marriage covenant may be broken, less have broken it.'

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8. S. AMBROSE, A.D. 386 (*Lombardy*).

'Let no man make himself easy on account of mere human laws. All illicit intercourse is adultery; and that is not permitted to a man which is forbidden to a woman. The same chastity is due on the husband's side, as on the wife's. Whatever has been committed against her who is not the man's lawful wife incurs condemnation as adultery.'¹

In his Sermons on S. Luke,² he says, 'Be unwilling therefore to put away a wife, lest thou deny God to be the Author of thy marriage. For if you ought to tolerate and amend the manners of strangers, how much more of your wife! Hear what the Lord said, He that putteth away his wife causeth her to commit adultery. Because, since it is not lawful for her during her husband's lifetime to enter upon a new marriage' ('mutare conjugium'), 'sinful desire may possibly steal in upon her by surprise. And so he that is the cause of her error, is guilty of her fault.'

9. S. JEROME, A.D. 346-420 (*Roman and Assyrian*).

His account of the penance of Fabiola for having married a second husband in the lifetime of her first husband, whose evil life had driven her to separate from him, is well known. The following are one or two passages from it:—

'Fabiola then, because she had persuaded herself, and thought that her husband was rightfully divorced, and because she had not known the full force of the Gospel, in which every plea for marriage, while the husbands live, is cut away from women, in avoiding many wounds of the devil, incautiously received this one.' Just before he had said, 'With us (Christians) what is forbidden to women, is equally forbidden to their husbands, and the same rule is decreed by like condition.'³

He goes on to say that, after the death of her second husband, she 'came to herself,' and put on sackcloth and stood amongst the penitents in Rome; and when before the Church she had been readmitted to communion, she gave up her ample fortune to the poor, and founded a hospital, and worked in it as a nurse.

We see that Fabiola, being young, took advantage of

¹ *De Abraham*, I. iv. Opera (Paris, 1686), Tom. i. col. 291.

² Lib. viii. § 4, *ib.* col. 1471.

³ Epis. lxxvii., *Ad Oceanum*, § 3.

the civil law, which allowed such marriage, and married again in the lifetime of her divorced husband ; and that when she 'came to herself,' she did penance of extreme severity which she would not have been allowed to do had the Roman Church at the time tolerated such marriages. It is ridiculous to suppose that a woman would have been allowed to do public penance in sackcloth for an imaginary fault. It is quite true that S. Jerome makes excuses for her, which amount to this—that she was young, and wanted a husband, and *did not know the strictness* of the Gospel precept.

In another letter¹ he is speaking of a Christian woman, who had been divorced, and 'by force' married to another, and who wished to know if she might communicate without doing penance, and he says :—

'Therefore this sister, who (as she says) was compelled by force to marry another, if she wish to receive the Body of Christ, and not be reputed an adulteress, must do penance : so that, however, with the second husband, who is not called a husband, but an adulterer, she may not company from the time of her penance.'

There are many other passages in his writings, Commentaries especially, to the same effect. There is not much room for doubt here.

10. S. AUGUSTINE, A.D. 354-429 (*African*).

Of S. Augustine's writings on the question of remarriage after divorce, Dr. Pusey says succinctly 'Augustine dissuades from it but thinks it a venial error': he gives no reference to any of the eleven folio volumes of his works, but probably he had in his mind the passage 'in the treatise *De Fide et Operibus*,' where Augustine is speaking about sins that would exclude candidates from Baptism. He writes : 'Of a concubine, if she have professed that she will not know another man, even though she be dismissed by the man who keeps her, it is justly doubted whether she ought not to be admitted to receive Baptism. Whoever also have divorced his wife detected in adultery, and have married another, does not seem to be on a par with those who divorce except for the cause of adultery, and marry again : and in the Divine sentence it is so obscure, whether the man, who without doubt may dismiss his wife for

¹ Epis. lv. § 4, *Ad Amandum*.

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adultery, is to be esteemed an adulterer if he have married another, that, in my opinion, a man in that case is deceived venially. Wherefore these things which are manifest crimes of impurity are by all means to be excluded from Baptism, unless they be corrected by change of will and penance' (chapter xix. § 35).

We must remember that this treatise was written in answer to certain laymen, who were of opinion that repentance and obedience were not necessary antecedents to Baptism. Faith was regarded as necessary, but, in the words of S. Augustine, 'if a man was living with a harlot and even professed that he had no intention of leaving her, he might be baptized and then afterwards be told that he must alter his mode of life.' This was the contrary error to those who thought that the Church must consist of the good only. How is this to be reconciled with the watchings and fastings and careful life which are required of candidates for Baptism? S. Augustine meets such arguments as that the Israelites passed through the Red Sea before the Ten Commandments were given, &c. He says that open and manifest sins must be given up by the unbaptized before they can be baptized; but in some matters where there was a doubt, and the unbaptized had acted in good faith, this need not exclude from Baptism. In other words, S. Augustine thinks it a venial sin in unbaptized heathen, but adultery in Christians.

For in dealing with those who are Christians, S. Augustine does not hesitate to call such a marriage adultery. For example: 'For any kind of fornication, whether of body or of spirit, where infidelity is understood, if a husband be divorced the wife may not marry another, and if a wife be divorced the husband may not marry another, since the Lord says, without making any exception, If a woman divorce her husband and be married to another, she committeth adultery: and Every man who divorces his wife and marries another committeth adultery.'¹

And again: 'Divine Scripture so commends the covenant of marriage of male and female, that neither may a wife divorced from a husband marry another, so long as her husband lives; nor may a man divorced from a wife marry another, except she be dead who has left him.' 'To such an extent is that marriage covenant once entered upon

¹ *De Conj. Adult.* i. 25.

a Sacramental thing, that it is not made void even by a separation : Since during the lifetime of the husband, the wife (though she be deserted by him) is an adulteress, if she marry another ; and the husband who deserted her is the Cause of the Evil.¹

If S. Augustine thought remarriage after a divorce from an adulterous wife was 'venial' in an unbaptized man who had not been taught the more excellent way, there is not much doubt in his own teaching, as may be seen in the following sermon.²

'Hear, dearly beloved, members of Christ and sons of our Catholic Mother: What I say to the candidates for baptism, let the baptized hear ; what I say to the faithful, let the candidates hear ; what to candidates and faithful, let the penitents hear ; what to all these, let the Catechumens hear : let all hear, let all fear, let none despise. To the Candidates I say, you must not commit fornication. It must suffice you to have wives, or not ; but you must not have concubines. Let GOD hear if you are deaf, let His angels hear if you despise. You MUST NOT have concubines. Though you have no wives, you must not have concubines, whom you may dismiss, to marry wives. How much more will it be damnation to you if you wish to have both wives and concubines ! *You must not have wives whose former husbands are still alive.* And, women, you must not have husbands whose former wives still live. *Such marriages are adulterous ;* not by the law of the Civil Courts, but by the law of Heaven. You may NOT marry that woman who has departed from her husband by divorce. A man may dismiss his wife because of fornication *alone* : but while she lives another *may not be married.* Nor may you, women, have those men as husbands, from whom their wives have departed by divorce : they are adulteries, not marriages.'

Yet Dr. Pusey can say, without a single reference, 'S. Augustine dissuades from it, but thinks it a venial error.'

Other passages of a similar import might be quoted ; and Bingham's summary is correct : 'S. Austin was fully persuaded in his own mind that such marriages after divorce were unlawful,' for Christians.

¹ *De Bono Conjugali*, § 3, 6.

² Sermon. 392 (Paris, 1683), Tom. v. col. 1503.

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11. S. CHRYSOSTOM A.D. 347-407 (*Eastern*).

The golden-mouthed rhetoric of S. Chrysostom makes it somewhat difficult to be certain what his opinion was: the result seems rather to be that he is quoted on both sides, which may be due to his superabundant rhetoric.

There is no doubt expressed in the following passage from his 62nd Homily on S. Matthew:—

‘But now both by the manner of the Creation and the manner of the legislation, He showed that one man must dwell with one woman continually, and never be separated. . . . After that, with authority He Himself interprets and gives the law, saying, So they are no more two, but one flesh. As, therefore, to mutilate the flesh is impious, so to divorce a wife is against all law. And He stayed not there, but also brought in God, saying, What therefore God joined together, let not man put asunder: Showing that it is done against nature, and against law: against nature, for one flesh is cut in twain; against law, because when God hath joined, and commanded that there be no separation, ye yourselves endeavour to do it.’

It would be impossible to use stronger language in favour of the indissolubility of marriage; but in the 19th Homily on the First Epistle to the Corinthians there is a rhetorical passage, which may mean that marriage may be dissolved by unfaithfulness. He is speaking on the passage ‘the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband.’ He asks why this is. ‘How, then, in this case has the uncleanness [of unbelief] been overcome, so that fellowship has been permitted; but in the case of the woman who commits fornication, the husband who casts her off is not condemned? Because in the one case there is a hope to save the lost party by means of the marriage, but in the other the marriage has been already dissolved; there both are corrupted, but here the accusation is only against one. . . . Again, after the wife’s fornication, the husband is no longer a husband, but in the other case, even if the wife be an idolater, the right of the husband is not lost.’

It may be doubted whether more is meant here than an extreme kind of rhetorical antithesis. There is no word of permission of remarriage.

12. S. BASIL, A.D. 360-378 (*Eastern*).

Ethics—Rule 73. 'A husband must not separate from his wife, nor a wife from her husband, except one be detected in fornication, or be hindered from piety.'

The texts on which this is grounded are S. Matthew v. 31, 32, S. Luke xiv. 26, S. Matthew xix. 9, 1 Cor. vii. 10, 11.

Rule 74. 'A husband who has sent away his own wife must not marry another; nor may a woman divorced from a husband marry.'

The text in proof is S. Matthew xiv. 9.

This is the opinion of Basil before he came into a position when he had to decide upon discipline, and whilst he was still a layman.

After he was ordained priest he preached some Homilies on the Creation. In one of these he speaks to wives and bids them bear with their husbands though they be brutal and unkind.

'Even though her husband be rough and brutal in manners, yet she must bear with him, and on *no excuse* must she consent to tear asunder the unity.'

Thus far we seem to have S. Basil's own mind; but when he became Bishop and Metropolitan he had to administer the Canons and Customs he found in use.

In A.D. 375 he writes a Canonical letter (216) to the Bishop of Iconium, and here we can see that he does not quite agree with the rule he has to enforce.

'Canon 77. He that leaves his lawfully married wife, and marries another, according to the Lord's decision, is guilty of adultery. But by the Canons of our fathers, such should do penance as Mourners for one year, Hearers for two years, Prostrators for three years, and in the seventh year should be reckoned with the faithful, and thus be reckoned worthy of the oblation, if with tears they repent.'

But before this he had sent other answers which have influenced the East ever since, and were quoted by Archbishop Theodore in his 'Penitentiale.' He seems to be sure of what is right, but to be hampered (as is natural) by the difficulty of carrying it out.

'Canon 9. The Lord's decision appertains equally to husbands and wives about its not being lawful to with-

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'Canon 21. If a man living with his wife, and then not content with his marriage, falls into fornication, we judge him to be a fornicator, and we give him a longer penance. However, we have not a Canon to bring him under the charge of adultery if the sin be with an unmarried woman . . . So that a wife must receive her husband coming home from his fornication; but the husband shall send away from his own house his wife who has been defiled. And of this the reason is not easily given: but custom has so prevailed.'

'Canon 48. She that has been deserted by her husband, *according to my opinion*, should remain unmarried.'

S. Basil then seems to bear witness that a laxer rule, which was not easy to excuse, was tampering with the strictness of Evangelical discipline.

13. S. EPIPHANIUS, A.D. 367-403 (Eastern).

There is one passage in his great work on heresies which bears on this subject. It is obscure in the original, and, indeed, the text as it stands is corrupt, but the general drift of it is plain.

'It is lawful to bear with the weakness of the lay people, and when they cannot stay at the first wife, they may couple with a second wife *after the death of the first*. And he that has had only one is held in higher esteem and honour with Church people. But he that cannot be content with one *after her death*, divorce having taken place on any excuse, fornication, adultery, or other evil cause, if the man marry a second wife (or the wife a second husband), the Divine word blames him not, and does not hide him from the Church and life, but tolerates him because of his weakness. Not that he may have two wives at the same time, but having been separated from one, if perchance he have been lawfully married to a second, the Holy Word and the Holy Church of God have pity on him.'

Here '*lawfully married*' clearly refers to the civil law. Epiphanius does not cite any passage of Scripture, or Canon, and the causes mentioned for divorce are wider than the exception in S. Matthew.

14. HILARY, the Deacon, *cir.* A.D. 384 (*Roman*).

He is the reputed author of a Commentary on S. Paul's Epistles, generally bound up with the works of S. Ambrose, which has caused him to be called AMBROSIASTER. Hilary was a man of some importance. He was sent by Liberius with Lucifer of Cagliari and the priest Pancratius to the Emperor Constantius. This intimacy with Lucifer led to his embracing for a time the views (which were regarded and treated as heretical) of Lucifer of Cagliari. But he was reconciled to the Church before his death. The following passage is from his Commentary on the First Epistle to the Corinthians vii. 10, 11. His view is remarkable:—

'The Apostle's advice is that if the wife depart because of the husband's ill life, she must remain unmarried, or be reconciled to her husband. But [he says], if she cannot contain, because she does not wish to fight against the flesh, let her be reconciled to her husband. For it is not allowed to the wife to marry if she have put away her husband on account of fornication, or apostasy, or gross immorality: because the inferior has not altogether the same law as the superior. If, however, he have apostatized, or is grossly immoral, she may neither marry another, nor return to him.

'And the husband must not dismiss his wife. But we must understand "except for the cause of fornication." And therefore he did not add, what he did of the wife: because a man may marry again if he dismisses his sinning wife; for the man is not bound by the same law as the woman. For the head of the woman is the man.'

There is one thing about this, that the writer knows his own mind, and that is that the rights of the two sexes are altogether unequal. The perfectly innocent wife may not marry again, and in two cases may not be reconciled to her husband. The man may dismiss his wife, and marry again at pleasure.

15. S. ASTERIUS, *A.D. c.* 400 (*Asiatic*).

I have no means of referring to the original of this Father; I am therefore constrained to copy from Mr. Keble, 'Sequel,' p. 58:—

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'They are no more twain, but one flesh. What, therefore, God hath joined together let no man put asunder. So He then spake to the Pharisees: Hear it now, ye who trade in wives, who change them as garments from time to time . . . Who marry the dowry and the property, but count the persons matter of gain and traffic: who on slight offence write a bill of divorce, and leave, as it were, many widows living. Make up your minds, be entirely convinced of it, that marriages are severed by nothing save death and adultery.'

'He dwells [says Mr. Keble] on this subject long and earnestly, introducing a great variety of topics, as one who was dealing with a present and flagrant evil: allowing, however, in conclusion, that if the husband justly plead adultery as his ground of divorce, all our approbation and sympathy should go along with him.

"The law of continence [adds Asterius] is enacted of God, not for women only, but for men as well: although they, *abiding by human lawgivers*, who give them leave to be impure, are severe judges and exactors of female chastity, while themselves, with all shamelessness, run wild after many wives . . . But if any, *lending ear to the laws of Rome*, think themselves licensed to commit whoredom . . . they know not how very greatly the Divine laws disagree with the doctrine of men."

'Probably [is the comment of Mr. Keble] the writer of these sentences had some to hold that marriage was altogether annulled by the wife's adultery: but it may be as well to observe, that he does not distinctly say so; he nowhere speaks of the injured husband as having a right to marry again: and all his argument will stand, if we suppose such words as "dirimi" and "divortium" to mean only separation from actual intercourse.'

Thus far Mr. Keble. We can only say that Asterius seems to attribute the same effect to death and adultery; if so, the right of remarriage would be the same after both.

16. S. GREGORY NAZIANZEN, A.D. 380 (Eastern).

At the above date S. Gregory preached in the Metropolitan Church at Constantinople before the Emperor Theodosius, and took as the text of one of his sermons the

first eleven verses of the nineteenth chapter of S. Matthew. He speaks of the whole question of divorcé, and complains of the civil law of the Empire as being at variance with the law of Christ, especially as affecting the two sexes unequally. It was a brave remonstrance before the Emperor against relaxing the law of Christ by the introduction of the Roman civil law.

He says that our Lord had been attacked by many questions on all sides, and with the questions He dealt in different manner, some He answered, some He silenced. In the passage under consideration the Pharisees tempt Him by a question about divorce.

'The question you have asked seems to me to honour self-restraint, and to demand a benevolent answer. Self-restraint, about which I see that the majority of men are evilly disposed, and their law [*i.e.* the Roman law at the time] unequal and inconsistent. For whatever can be the reason that it punished the woman, and indulged the man? And a woman who has plotted evil about her husband's bed, is an adulteress, and bitter are the sentences of the law about this: is then a husband, sinning against his wife by fornication, not liable to trial? I approve not this legislation: I praise not this custom. Men were the law-makers, therefore the legislation is against women.' He then shows that God's law treats men and women alike. 'You see the equality of [God's] legislation: One is the Maker of men and women: one dust are both made of; the likeness one; the law is one; death is one; resurrection is one. . . . How then do you ask about self-restraint, and contribute nothing in return?' He then quotes S. Paul: 'I speak of Christ and the Church.' 'If there be two Christs, there may be two husbands, or two wives. But if there is only one Christ, one Head of the Church, there is also but one flesh, and let the second be rejected. . . . The [Roman civil] law gives a divorce for every cause. But Christ not for every cause, but He allows a man only to separate from an unchaste wife.'

S. Gregory does not here speak of any marriage after divorce; but, from his earnest appeal to the oneness of flesh brought about by marriage, it would almost seem that in his rhetoric he intended his hearers to understand that he regards marriage as indissoluble; but more cannot be said.

¹ Opera (Paris, 1609), Tom. I. p. 499; *Hom.* 31, al. 37.

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17. S. INNOCENT I., A.D. 402-417 (*Roman*).

Letter III. vi.

'Your charity asked also about those who after divorce had entered on another marriage. It is clear that they are adulterers on both sides. For those who during the lifetime of husband or wife (though the marriage seems to have been dissevered) hurry to another connection are unable not to seem adulterous; so much so that even those persons with whom such have been joined, even themselves seem to have committed adultery; according to that which we read in the Gospel, "Whosoever have put away his wife, and married another, committeth adultery; and whoever marries a woman that is put away, committeth adultery." Therefore all such must be repelled from the Communion of the faithful.'

Here there is no mistaking the rule of Innocent. It is to be remarked that he quotes S. Matthew *without* the restricting clause, as if he felt that it was acknowledged that such restricting clause did not apply. Later on he wrote a letter which some have interpreted to mean something different from the above.

Letter IX.

'A marriage having been properly celebrated between Fortunius and Ursa, an inroad of captivity would have caused a grave difficulty, unless the sacred canons of religion had provided for it. For when the woman aforesaid, Ursa, was held in captivity, Fortunius aforesaid is known to have married Restituta. But by the mercy of the Lord, Ursa came back and has come to us, and asserted (what none denies) that she was the man's wife. About which we determine, in accordance with the Catholic faith, that that is marriage which was first performed by Divine grace; and the association of the second woman, in the lifetime of the first, who *was not even cast off by divorce*, can be lawful by no means whatever' (*nullo pacto posse esse legitimum*).²

Some have thought that because S. Innocent here says 'not even cast off by divorce,' that therefore he implied that if she had been divorced the second marriage would have been lawful. But surely the meaning is that there was not the excuse of a civil divorce, so that *nullo pacto*

¹ Labbe, *Councils*, Tom. ii. col. 1256.

² *Ibid.* Tom. ii. col. 1263.

could it be lawful. The *nullo pacto* might be translated 'by no law,' or 'no agreement'; *pactum* has been used of a marriage contract. The meaning might be that, as the civil law had not been invoked to dissolve the marriage civilly, not even the civil law could make the second marriage legal. There does not seem to be the least symptom of a difference of opinion from that stated firmly in the first quotation.

18. S. HILARY of POITIERS, A.D. 356 (*Gallican*).

S. Hilary has been quoted as in favour of divorce and remarriage, but the passage scarcely bears out the claim:—
 'Commending equity towards all, He commanded that it should specially be maintained in the peace of marriage adding much to the law [of Moses] and taking nothing from it. Nor indeed can the improvement be disputed. For when the law had given liberty of giving divorce under the authority of a writing, *now* the faith of the Gospel not only enjoined a wish for peace on the husband but also laid on him the guilt of a wife forced into adultery, if she must marry another because of his being compelled to depart: as it prescribes no other cause of ceasing from wedlock, than that it defile the husband by the society of a prostitute wife.'

Surely there is no word here more than the permission of cessation of intercourse: and the phrase *prostituta uxore* would imply shameless and continued sin.

In his comment on the nineteenth chapter of S. Matthew there is nothing bearing on our present subject. Indeed, he speaks with somewhat of awe and reverence of the matter. Speaking of the parable of the Marriage of the King's Son, he says:—²

'But here marriage is a sacrament (or mysterious simile, or sign) of the heavenly life and of the eternal glory to be taken up in the Resurrection. Rightly therefore are they made by the Father; because the association of this eternity and the espoused union of the new body was now perfect in Christ. And in this place indeed we will give the same admonition as was given above in treating of Divorce, to consider diligently what is signified of the nature (*ratione*) of the Resurrection, and also that which

¹ *In Matt.* cap. iv. § 22; *Veronae*, 1730, i. col. 686.

² *In Matt.* cap. xxii. § 3; *ibid.* col. 778.

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was spoken to Eve in the person of Adam, because it is a great sacrament (or mystery); lest it be carelessly passed by.'

Here then there is little ground for mistake; S. Hilary likens marriage to the eternal union of soul and body in the Resurrection; this does not admit of any divorce, so as to admit of remarriage with another.

Mr. Keble says: 'To estimate these sayings we must bear in mind the tenet so frequently asserted by S. Augustine, That Indissolubility is inseparable from the primitive, or Christian, or Sacramental Union of Marriage.'¹

19. S. CHROMATIUS, A.D. *cir.* 405 (*Italian*).

I have no access to the works of this Father, and quote from Mr. Keble's translation.²

'Wherefore let those men be well aware what a heavy sentence of condemnation they incur in God's sight, who for unbridled lust dismiss their wives without cause of fornication, and then seek to pass to another marriage. They believe they do so with impunity, because it seems permitted by the laws of man and of the world; not knowing that hereby they aggravate their fault, in that they prefer human laws to divine; in believing that lawful, which God hath ordained to be unlawful, because it is freely allowed by man. But as it is impiety to put away a wife who is living in chastity and purity, so also it is permitted to put away an adulteress, because she hath made herself unfit for the society of a husband, who by sinning against her own body hath dared to profane the temple of God.'

Here we see the same declaration of the antagonism between Christ's law of marriage and the Imperial civil law, which was gradually corrupting the Divine law in the East, and was crippling the West to a certain extent.

Mr. Keble remarks on the quotation: 'There is no proof that the exception of our Lord was understood by him to leave room for a subsequent marriage, as well as for dismissal.'

20. THEODORET, A.D. 433 (*Syrian*).

Several passages are quoted from this Father, but the following are most to the point.

¹ *Sequel*, p. 151.

² *Ibid.* p. 166.

In his Commentary on the Epistle to the Romans chapter vii. 3,¹ he says:—

'The law calls her an adulteress, not the one who joins herself to another man after the death of her husband, but who, while her consort survives, is joined to another; for this one it commands to be punished as insulting the law of marriage. It is manifest, then, that when her husband has reached the end of his life, it is lawful and not unlawful for the widow to marry another. And the Apostle knew that the law gave free license to the living to dissolve their marriage when it was not to their mind. But he gave heed to his Master's teaching, which said that Moses gave this law because of the Jews' hardness of heart; but the law of nature added nothing of the sort. For God made one man, and one woman, laying down the law of marriage in their very creation.'

This seems pretty clear; it speaks of marriage as existing between one man and one only woman, just as it was instituted in Paradise.

Again, on 1 Cor. vii. 10, 11², he writes:—

'The Apostle here reminds them of the law of the Gospel. For the Lord said in the Holy Gospels, Every one that putteth away his wife, save for the cause of fornication, causeth her to commit adultery. Therefore, he adds, "Not I, but the Lord." But the saying, *Let her remain unmarried, or be reconciled to her husband*, is not opposed to the other, *Defraud not one the other, except it be with consent*. For this is not said to those who separate for any other reason than only for continence; but above he gives the law to those who quarrel with their yokefellow about other doings. And he endeavours to guard the marriage bond unbroken; but yielding to infirmity, he lays down the law of continence to the one that departs, and by this continence he prohibits the dissolution of marriage. For by prohibiting connection with another, he compels each party to return back again to the former marriage.'

This again seems unmistakably to assert the permanence of the marriage bond. Observe, too, that Theodoret uses the seemly word *πράγμα* to represent unseemly doings as does S. Paul in the Second Epistle to the Corinthians.

But six years before Theodoret had used language which has been cited as allowing marriage after divorce

¹ Opera (Paris, 1642), Tom. iii. 51.

² *Ibid.* p. 151.

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² *Ibid.* p. 151.

In his treatise against paganism and pagan philosophy, which Julian the Apostate had endeavoured to revive, in the 9th Sermon, or discourse, he is contrasting Christian morality with that of Plato.¹

'And he for his part enacted that men might without scruple company with other men's wives ; but the Creator of nature, since in making man's nature He formed from the beginning *one* man and *one* woman, also forbade marriage to be dissolved ; and gave one only cause of dissolving, which truly wrenches the yoke asunder. For He says, He that puts away his wife except for the cause of fornication causeth her to commit adultery ; and he who has married a divorced woman commits adultery. In which words he bids all other defects of a wife to be tolerated, though she be a brawler, or a drunkard, or addicted to scolding. But if she transgress the laws of marriage, and looks towards another man, then he commands to loose the yoke. And again He gave the same laws by the Tentmaker. And he, writing to the Corinthians, proposed the same for all men.'

There is no word here of remarriage ; and his reference to the Epistle to the Corinthians would seem to imply that the same teaching is in both, and as Theodoret asserts there that 'he prohibits the dissolution of marriage,' it is reasonable to suppose that he does here.

21. S. GREGORY the Great, A.D. 600 (*Roman*).

A decision of S. Gregory is quoted in the Canon Law, as follows :—²

'Those who detect their wives in adultery, they may *not*, either man or woman, take another wife or husband, so long as both are alive.'

This is introduced in the *Decretum* with 'Item illud Gregorii' ; but Berardi³ denies that it is or can be written by Gregory. However, he cannot trace it anywhere else. It is given here for what it is worth.

22. S. ZACHARY, A.D. 750 (*Roman*).

The very next chapter to the above contains a decision of Zachary as follows :—⁴

¹ Opera (Paris, 1642), Tom. iv. p. 619.

² *Decret.* Pars II. caus. xxxii. q. vii. c. 22.

³ Madrid, 1783, Tom. iii. p. 154.

⁴ *Decretum*, Lyons, 1606, col. 1642.

'Have you lain with your wife's sister? If you have, you must have neither the one nor the other; and if she who was your wife, was not conscious of your wickedness, if she cannot contain, let her marry in the Lord whom she will.'

Berardi¹ shows that this is not to be attributed to Zachary, Oriental though he was; but that it belongs to a penitential of Bishop Burchard, of Worms, A.D. *cir.* 1006.

No passage bearing on the question in an Author not quoted above has been knowingly omitted. In voluminous writers such as S. Augustine, much has been necessarily omitted to avoid unnecessary prolixity. The following summing up of this part of the evidence by Mr. Keble is so valuable that it is here given, as the pamphlet is now very scarce:—

'Only three or four of the whole number speak unequivocally for the exception: Lactantius, of whom S. Jerome intimates that he was very imperfect in his Christianity; perhaps S. Asterius of Amasa, who seems to have been perfectly overwhelmed and scared by the multitude of divorces under the imperial law; S. Epiphanius, in a passage obviously corrupt and imperfect; and Hilary the Deacon, or whoever else compiled the Commentary on the Epistles, which goes falsely by the name of S. Ambrose.

'But the spirit of the great Theologians, Tertullian, Origen, Basil, Nazianzen, Ambrose, Jerome, Chrysostom, Augustine, is decidedly against any exception to the indissolubility of Christian marriage, and that especially on high sacramental grounds. And where they appear to speak otherwise, they will be found to be either speaking of separation short of divorce, or of marriage not altogether Christian, or of equitable allowance in enforcing discipline, due to persons who from the state of the civil law, or other causes, might be presumed to have sinned in ignorance. Such consideration on their part does but add weight to their agreement in the general principle; it shows that they were not blindly and fanatically maintaining a mere current tradition, but sounding their way as they went, while, as experienced pilots, they had no doubt of its general bearings. The like may be said as to their evidence

¹ Madrid, 1783, Tom. iii. p. 186.

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freedom, with one exception or two at most, from any tendency to disparage Holy Matrimony, such as by a false asceticism many were led to in their time. The one exception is, of course, Tertullian, who has been cited here not so much for his own theological judgment as for his unexceptionable testimony to the contemporary judgment of the Church. The same remark may *perhaps* apply (but in an immeasurably less degree) to S. Jerome; and yet his language also in the case of Fabiola shows how open he kept himself to all that might be said in particular cases by way of mitigation.

Very observable again is the coincidence (generally speaking) of these great men one with another in the cardinal points of their several arguments. They agree in premisses, but differ in details, sometimes of exposition, sometimes of practice, in a way precisely analogous to what we may observe in them, when they are dealing with the great and known verities of the Creed, or with the prime rules of Christian discipline. Everywhere they write as men having in their minds a certain standard, of which there was no doubt in the Church, whereby a wide difference was for ever constituted between her marriage laws and those of the world. And this, not as men might speak of some isolated point of discipline, however momentous, but as a very material part of the system of the Kingdom of Heaven. Not one or two, but all who go into the subject, treat, as has been seen, of the absolute indissolubility of marriage as of a great mysterious doctrine,—or, if one may so call it, a great sacramental fact,—having special relation, on the one hand, to the creation of man in God's own Image; on the other to the restoration of that Image through the Incarnation of the Son of God, and our wonderful union with Him. Of the continuance of the bond in those even who are separated for adultery, they speak as of something analogous to the supernatural effect of a sacrament, abiding for condemnation in those who take it unworthily; and as to the continency of the innocent party, *that* associates itself in their minds with the blessed duty and doctrine of not so rejecting a sinner, as not to leave room for entire absolution on true repentance.

All this unity of thought and principle harmonizes critically with the fact, that a distinct Canon was existing among them, "whereof the memory of the Church reached not to the contrary," to the effect that "if any layman

cast out his own wife and take another, or if he take one dismissed by another man, he must be excommunicate." Surely it is contrary to all notions of regular and reasonable legislation, that the framers and authoritative maintainers of that Canon should not sooner or later have modified it according to the supposed exception had they really intended that exception.

'It will also have been observed, that after the Empire became Christian, and the law of Constantine on Divorce had been enacted, the Christian divines still continued to remark on the difference between the laws of the Church and of the world, much in the same tone as before. When e.g. S. Ambrose wrote, "thou puttest away thy wife, and thinkest that it is permitted to thee because human law forbids it not; but the law of God does forbid";—it was but the repetition of remarks made by S. Justin and Tertullian to the same purpose. He seems to say, with S. Jerome on a kindred topic, "Aliae sunt leges Cæsarum aliae Christi." Yet when S. Ambrose and S. Jerome wrote, the "Law of the Cæsars" had approached, if we may believe modern statements, within a hair's breadth of the law of Christ, in respect of a husband's right to put away. The Christian law, they tell us, is, "Separation for adultery dissolves marriage"; Constantine's law, as we have seen, added, "Separation for sorcery, or for pandering to lewdness, does the same." Is this sufficient to account for the stress laid in so many places on the discrepancy between the Church's rule and the State's? If not, can we well avoid the inference, that the Fathers noting that discrepancy, did not recognize the exception for adultery as part of the Church's law?'

The following Table will show the results arrived at in the preceding passages from the Fathers:—

1. HERMAS, A.D. 100, *Roman*. Prohibits.
2. S. JUSTIN MARTYR, A.D. 140, *Asiatic*. Prohibits.
3. ATHENAGORAS, A.D. 177, *Athenian*. Prohibits.
4. S. CLEMENT of Alexandria, A.D. 192, *Egyptian*. Prohibits.
5. TERTULLIAN, A.D. 200, *African*. Probably prohibits.
6. ORIGEN, A.D. 245, *Egyptian and Syrian*. Prohibits.
7. LACTANTIUS, A.D. 320, *African*. Silent about *remarriage* of either man or woman.
8. S. AMBROSE, A.D. 386, *Lombard*. Prohibits.
9. S. JEROME, A.D. 400, *Roman and Syrian*. Prohibits.
10. S. AUGUSTINE, A.D. *cir.* 420, *African*. Prohibits for Christians, but thinks that Catechumens so married may be baptized.

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11. S. CHRYSOSTOM, A.D. 400 *cir.*, *Eastern*. Rhetorically indefinite but has no word of lawful remarriage.
12. S. BASIL, A.D. 400, *Eastern*. Cannot excuse the laxer rule that is creeping in.
13. S. EPIPHANIUS, A.D. 400, *Eastern*. In an obscure and corrupt passage, seems to allow marriage to both parties when the civil law allows it.
14. HILARY the Deacon, A.D. 384, *Roman*. The man may dismiss his wife and marry again: the former wife, though innocent, may *not* marry again.
15. S. ASTERIUS, A.D. 400, *Asiatic*. Ascribes same effect to adultery as to death; probably implies permission.
16. S. GREGORY NAZIANZEN, A.D. 380, *Eastern*. Inveighs against the laxity of civil laws; probably prohibits.
17. S. INNOCENT, A.D. 415, *Roman*. Prohibits.
18. S. HILARY of Poitiers, A.D. 356, *Gallican*. Probably prohibits.
19. S. CHROMATIUS, A.D. 405, *Italian*. Indefinite.
20. THEODORET, A.D. 433, *Syrian*. Probably prohibits.
21. S. GREGORY the Great, A.D. 600, *Roman*. Prohibits (as quoted).

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IV.

THE ENGLISH CHURCH.

'The sanctity of marriage as a Christian obligation implies the faithful union of one man with one woman until the union is severed by death.'—*Lambeth Encyclical*, 1888, signed by 145 Bishops.

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IV.

THE ENGLISH CHURCH.

It is hardly possible to doubt the mind of the English Church, which can be traced back without variation for about fifteen hundred and eighty years.

In A.D. 314 there were three British Bishops present at the Council of Arles, and they brought back with them the Canon of that Council:—‘Of those who detect their wives in adultery, and are young Christians, and are forbidden to marry: it was resolved that by all means they be counselled not in the lifetime of their wives (though adulterous) to take others.’ The divorced woman is still called ‘wife,’ hence ‘they are forbidden to marry,’ for such marriage would be polygamous. It is possible that another Canon (see part II. § 3) was also passed at this or a succeeding Council of Arles:—‘It was resolved that by all means a man be restrained from thinking it lawful during the lifetime of his divorced wife to marry another in addition: but whosoever shall have done so shall be cut off from Catholic Communion.’

In A.D. 673 Archbishop Theodore held a Council at Hertford, when the following Canon was passed:—

‘Let no man leave his own wife, except for fornication, as the Holy Gospel teaches. But if any man have driven out his own wife, joined to him in lawful marriage—if he really wishes to be a Christian—let him not be coupled to another, but remain as he is, or be reconciled to his own wife.’

In perfect accord with this is the note of the glory of the early Church of England, the Venerable Bede, in his commentary of S. Mark x. 10. He writes:—

‘In Matthew it is written more at length, “Whosoever shall put away his wife, except it be for fornication, and marry another, committeth adultery.” There is, then, one only *carnal* cause why a wife should be put away, that is fornication; and one only *spiritual* cause, the fear of God,

as many are read of as having done for the sake of religion. But there is no cause, written in the law of God, why another should be married in the lifetime of her that has been left.'

It is quite clear that Bede did not regard the exception mentioned by the Lord as authorizing the remarriage of a Christian after divorcing his wife.

Of the Penitential of Archbishop Theodore and of the Excerptions of Archbishop Egbert, a few words will be said in an Appendix: they need not be mentioned here, though Archbishop Egbert quotes the African Canon (part II. § 5).

In the tenth century, in the latter half of the century, we have certain 'Laws of the Northumbrian priests,' which are interesting in this connection:—

'35. If a priest dismiss one wife and take another, let him be anathema!

'54. If any man dismiss his lawful wife while she is living, and marry another, let him want God's mercy, unless he make satisfaction for it; and let every man retain his lawful wife so long as she lives, unless they both choose to be separated by the Bishop's consent and are willing to preserve their chastity for the future.'

In or about A.D. 1009 the Council of Eanham was held, which was, indeed, a National Council, as both provinces of Canterbury and York were represented.

'§ 8. Never let it be that a Christian marry . . . one that is divorced. Nor let him who desires to observe God's law aright, and to guard himself against hell fire, have more wives than one; but continue with her only, so long as she lives.'

This Canon was repeated in nearly the same words about ten years later in King Canute's time.

Thus it continued until the Reformation. When in A.D. 1537 'the Bishop's Book' was issued, it was there asserted 'that the bond of lawful marriage is of such sort that it cannot be dissolved or broken but by death only.'

Words of similar import were in 'the King's Book' of 1543, and a few words were added to emphasize the meaning. Thus in the following extract the words italicized were added in 1543:—'It is clean contrary to the godly institution and natural order of the laws of matrimony, as it was instituted by GOD in the beginning, that any man married should be divorced from his lawful

¹ Johnson's *English Canons*, i. pp. 377, 381.

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wife, and be set at liberty to marry.' Again, further on,
'Notwithstanding, in marriages lawfully made and according
to the ordinance of matrimony prescribed by God and the
laws of every realm, the bond thereof cannot be dissolved
during the lives of the parties between whom such matri-
mony is made.'

Then there came an attempt to introduce a new code
of Ecclesiastical Laws, which only issued in what has been
well-called, by a medical simile, 'a wandering clot of
legislation,' which had never any effect on the Church.
(See Appendix B.)

The work, which seems to have been prepared by
Archbishop Cranmer and Peter Martyr, first saw light in
1571, being published under the sponsorship of Foxe, the
Martyrologist, who was eager for its adoption by the
Church and Parliament and the favouring countenance of
learned men. He ends, 'I earnestly ask that they take in
good part this my boldness in issuing the book.'

In Convocation and Parliament the book was quietly
ignored. In 1571, the year it was issued, the Convocation
of Canterbury passed some Canons, the tenor of which
was quite different from that of the *Reformatio Legum*.
In these Canons there are several which take care for
greater regard being paid to the sacredness of marriage ;
children were not to marry without consent of parents, and
no boy under sixteen nor girl under fourteen might marry.
If any had married within the forbidden degrees of affinity,
they were to be separated by authority of the Bishop,
'especially (maxime vero) if a man had married his deceased
wife's sister ; for this is thought to be prohibited in Leviticus
by common consent and judgment of learned men.'

In 1597 the Convocation of Canterbury passed certain
Canons which were properly authenticated and 'promulged
under the Great Seal of England to be carefully observed
in either province, as well Canterbury as York.' Two of
the 'Capitula sive Constitutiones' are about marriage, and
are directly in the teeth of the suggestions of the *Reformatio
Legum*, and a re-enacting of the old law. When a full
code was drawn up in 1504, passed by both Convocations
of the two Provinces Canterbury and York, the two
'Capitula sive Constitutiones' of 1597 were somewhat
enlarged and strengthened, and appear as Canons 105, 106,
107. There are two divorces recognized—the one from the
bond of matrimony is nothing more than a declaration

that an antecedent impediment had prevented true marriage taking place; the other is a separation from bed and board only. In this last case bond and security were to be taken from both parties that they would not marry again. The English of the Canons is as follows, for these were passed in English and Latin: I do not know that the Canons of 1597 were ever issued by authority in English. All three copies which I have are in Latin: the Original, published in 1597 by Barker, the Reprint by Sparrow, and the Reprint by Cardwell.

Canon 105. *No sentence for Divorce to be given upon the sole confession of the parties.*

Forasmuch as matrimonial causes have been always reckoned and reputed among the weightiest, and therefore require the greater caution, when they come to be handled and debated in judgment, especially wherein matrimony, having been in the Church duly solemnized, is required upon any suggestion or pretext whatsoever to be dissolved or annulled, we do straitly charge and enjoin, That in all proceedings to divorce, and nullities of matrimony, good circumspection and advice be used, and that the truth may (as far as is possible) be sifted out by the deposition of witnesses, and other lawful proofs and evictions; and that credit be not given to the sole confession of the parties themselves, howsoever taken upon oath, either within or without the court.

106. *No sentence for Divorce to be given but in open court.*

No sentence shall be given either for separation *a thoro et mensa*, or for annulling of pretended matrimony, but in open court and in the seat of justice; and that with the knowledge and consent of the Archbishop within his province, or of the Bishop within his diocese, or of the Dean of the Arches, the Judge of the Audience of Canterbury, or of the Vicars General, or other principal officials, or *sede vacante*, of the Guardians of the Spiritualities, or other Ordinaries to whom of right it appertaineth, in their several jurisdictions and courts, and concerning them only that are then dwelling under their jurisdictions.

107. *In all sentences for Divorce, Bond to be taken for not marrying during each other's life.*

In all sentences pronounced only for Divorce and separation *a thoro et mensa*, there shall be a caution and restraint inserted in the act of the said sentence, That the

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parties so separated shall live chastely and continently; neither shall they during each other's life contract matrimony with any other person. And for the better observation of this last clause the said sentence of Divorce shall not be pronounced until the said party or parties requiring the same have given good and sufficient caution and security into the court that they will not any way break or transgress the said restraint or prohibition.'

No such thing as divorce from the bond of matrimony was recognized, except so far as it was a declaration of antecedent impediment which prevented the existence of lawful marriage.

This has been ever since the law of the Church of England.

In the same year that the Canons were passed, the first year of King James I., an Act was passed making it felony to have more than one wife, or than one husband, and offenders against this law were excepted from the various Acts of general pardon. But the Act excepted from its operation those who had married after seven years of absence, or who had been divorced, *a mensa et thoro*, or whose marriage had been declared null and void in an Ecclesiastical Court. This does not make it *lawful* for such to marry, it only excludes them from the *penalty of death*; in other words, it makes it a less crime in civil law.

The civil law of England was content to accept from the Church of England the law of marriage until the middle of the century. Then the great case of *Regina v. Millis* drew attention to the fact that the law of England required the minister of lawful marriage to be a priest in Holy Orders; and changes began to be introduced; and in 1857 an Act was passed which erected a Court for releasing married folk from the Bond of Matrimony, and regarded the remarriage of such divorced persons as legal under certain conditions.

Before 1857 'relief' was given by Act of Parliament to such persons as could afford it, to enable divorced persons to marry legally, so as to legitimate their issue. The first instance of such an Act was in 1669, in the dissolute times of the Restoration. Lord Roos, having obtained a separation from 'bed and board' in the Spiritual Court, applied for a private Act of Parliament to enable him to contract another marriage, which should be valid in the eye of the law. His being divorced *a mensa et thoro* would (by the

Act of James I.) prevent his being a *felon* if he married again; but it would not legitimate the issue of such bigamous contract, nor exempt him from other penalties. The licentious King, Charles II., took such interest in the matter that he himself appeared at the debate, on his throne, though not in royal robes. Milton, the stalwart advocate of easy divorce during the Commonwealth, was sought out to advise the promoters of the Bill. The Bill became an Act of Parliament, and the precedent of a series of Indemnity Acts; a precedent which has been adopted in the Colonies of Upper and Lower Canada. But these Acts were *in personam*, and not *in rem*, private Acts which enabled individuals to contract bigamous alliances without incurring legal penalties. They did not affect the law of the Church, nor the law of the land at large.

The Act of 1857 did not affect the law of the Church, which was so far forth recognized in the law, that priests of the Church of England were not compelled in this case (as they are in others) to marry persons whose divorced partners were still alive.

On February 19, 1879, a Committee of the Lower House of the Convocation of Canterbury presented a Canon on marriage after divorce, which had been concurred in by a Committee of the Province of York.

The Canon, which passed the Lower House without a dissentient voice, is as follows:—

‘Whereas the Church hath ever held that the bond of Holy Matrimony cannot be dissolved by any authority of man, teaching that those whom God hath joined together no man may put asunder, we do solemnly admonish all members of the Church who are married that they do not contract another marriage unless the former marriage hath been *dissolved by death*. And we also admonish all ministers that they do not solemnize such second marriages without sufficient proof that the former marriage has been so dissolved.’

The Upper House of Canterbury has not yet expressed an opinion on this proposed Canon.

In 1888 the solemn Lambeth Conference in quasi-conciliar action passed the following ‘Resolutions,’ which indeed have not the force of Canons, but which must have great influence:—

‘1. That inasmuch as Our Lord’s words expressly forbid divorce, except in the case of fornication or

adultery, the Christian Church cannot recognize Divorce in any other than the excepted case, or give any sanction to the marriage of any person who has been divorced contrary to this law, during the life of the other party.

'2. That under no circumstances ought the guilty party, in the case of a divorce for fornication or adultery, to be regarded, during the lifetime of the innocent party, as a fit recipient of the blessing of the Church in marriage.

'3. That, recognizing the fact that there always has been a difference of opinion in the Church on the question whether Our Lord meant to forbid marriage to the innocent party in a divorce for adultery, the Conference recommends that the clergy should not be instructed to refuse the Sacraments or other privileges of the Church to those who, under civil sanction, are thus married.'

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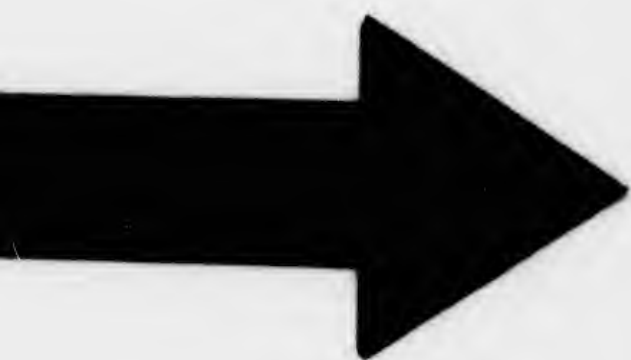
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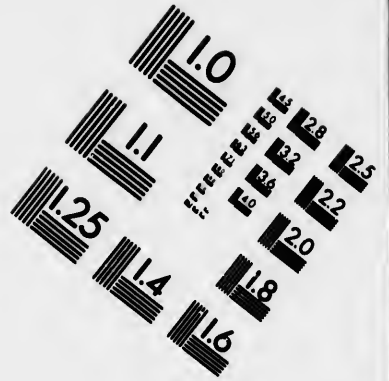
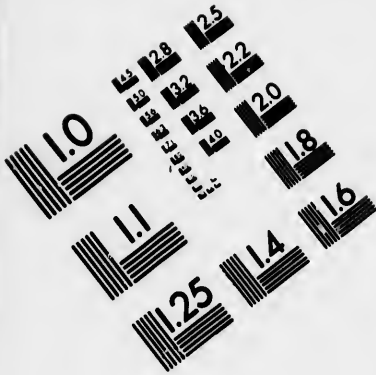
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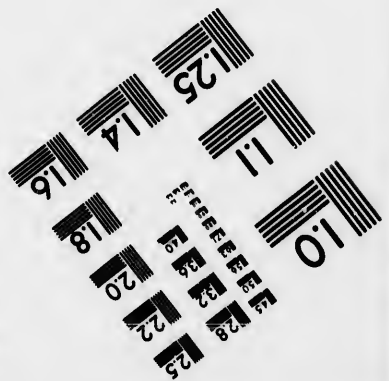
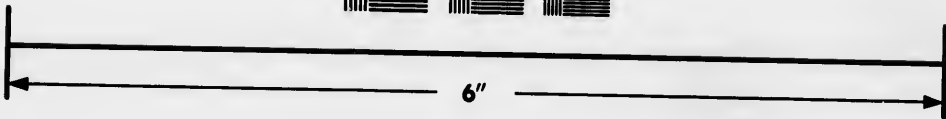
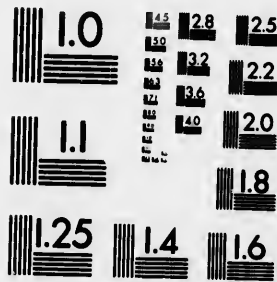
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APPENDIX A.

1. PENITENTIAL OF ARCHBISHOP THEODORE OF
CANTERBURY.

2. EXCERPTIONS OF ARCHBISHOP OF YORK.

1. THE PENITENTIAL OF THEODORE.

AFTER considerable investigation, the original of the collection of determinations under this name is thought to have been discovered. It is now shown, with the general acceptance of scholars, that it was not written by Theodore himself, but is supposed to be a collection of answers given by Theodore to certain questions on penance propounded to him by some one, and taken down at his mouth. It seems to have been published by his consent, if not by his authority; and to have exercised very great influence on the Continent of Europe, where Theodore's reputation was very great. While the position and character of Theodore would give great value to the work, there is no evidence whatever that it ever had conciliar authority, or was recognized as of canonical position in the English Church.

The Eastern education and learning is manifest in the document. S. Basil is often quoted, and the Novels of Justinian; and one section is devoted to a comparison of the different customs of the Eastern and Western Churches. Theodore's Eastern prejudices will be seen in his later views about marriage, as expressed in the Penitential, which differs considerably from the Canon of the Council of Hertford, where he presided. The views of the Penitential then carry the weight of his private personal character only, and cannot be regarded as testifying as fully to the mind of the Church over which he presided, as the Canon passed by the Church at Hertford does.

The following are some of the answers:—

xii. 5. 'If a man's wife commit fornication, he may dismiss her and marry another . . . She (if she is willing to do penance for her sins) after five years may marry another husband.

7. 'Lawful marriage may not be dissolved without consent of both parties.

8. 'One may give the other leave to serve God in a monastery, and then marry again, if they are in a first marriage, according to the Greeks, yet it is not according to the Canons; if, however, they are in a second marriage, they may not marry again so long as husband and wife are alive. If the husband makes himself a slave

on account of theft and fornication, or any sin, the wife, if she had not been married before, may after a year take another husband ; if she have been twice married, she may not.

9. 'A man may marry a month after his wife's death ; a woman may marry a year after her husband's death.

19. 'If a woman leave her husband because she despises him, and will not return and be reconciled to her husband, after five years, with the Bishop's consent, he may marry another.

20. 'If a wife is carried away captive and cannot be redeemed, the husband may marry another after a year.

23. 'If a man's wife have been carried off by the enemy, and he cannot get her back, he may take another ; for this is better than fornication.

24. 'If afterwards his wife returns, he must not take her, if he have another, but she may take another husband to herself if she had one before.'

It has been thought that these answers were given by Theodore before he came to England, while he was on the Continent of Europe. If so, it would account for the laxer views here revealed. He was passing from the rule of the Greeks, and had not come under the influence of the stricter discipline of the Church over which he was to preside, as seen in the Canon of Hertford.

2. THE EXCERPTIONS OF EGBERT, ARCHBISHOP OF YORK.

These extracts, 'Collected out of the Sayings and Canons of the Holy Father,' made about the year 750, have more the character of a Commonplace Book than anything else. They rather testify that the Archbishop was endeavouring by careful study to make himself acquainted with the variety of opinion and of Canon Law which existed, in order that he himself might be informed on the various topics dealt with. But otherwise they would not help us in the present inquiry. The various items are often contradictory, sometimes self-contradictory. A few are given in explanation of this.

'120. The African Canon. According to Evangelical discipline, neither let a wife dismissed from her husband take another man, the former living, nor an husband another woman ; but let them so remain or be reconciled.

'121. Augustin says : If a woman commit fornication she is to be relinquished, but another must not be taken so long as she lives.

'122. A Canon says : If a woman depart from her husband with a contempt of him, refusing to return and be reconciled to him, he may take another wife after five or seven years, with the Bishop's consent, if he cannot contain. But let him do penance for three years, or even so long as he lives, because he is convicted of adultery by the sentence of our Lord.'

This last 'Canon' seems remarkable. For, as Johnson says, 'If it was a crime, how could the Bishop's consent make it lawful ? If it was not a crime, what occasion for penance ?'

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APPENDIX B.

REFORMATIO LEGUM ECCLESIASTICARUM

THE value of this work has been so variously estimated, and its authority so asserted by those who happen to agree with some of the suggestions contained in it, that its history, so far as it is known, and can be gathered, is here given. This is quite necessary, since it is often quoted on this subject of marriage, as being supposed to contain the opinions of 'our reformers' on the subject; whereas indeed it is only the private opinion of Archbishop Cranmer, assisted by Peter Martyr (who was not a member of the Church of England), repudiated, as we shall see, by the Church of England whenever there was an opportunity.

In 1532 the clergy made a submission to King Henry VIII., in which they said that they were 'contented' that the Constitutions Provincial should 'be committed to the examination and judgment of thirty-two persons, whereof sixteen to be of the upper and nether house of the temporality, and other sixteen of the clergy, all to be chosen and appointed by your most noble grace'; and what these Commissioners recommended to be abolished were so to be 'by your Highness and the clergy,' that is, by Convocation. In consequence of this action of the clergy an Act of Parliament was passed (A.D. 1533), empowering the King to nominate the thirty-two persons; and as this was not done within the time specified, another Act was passed (A.D. 1535) to empower the King to nominate the thirty-two before or after the dissolution of that Parliament, and the Commissioners were to have power during the three years next after the dissolution of the Parliament.

No action, however, was taken, and in 1543 another Act was passed empowering the King to appoint Commissioners from time to time to do the work, but limiting the power to the King, Henry VIII., himself personally *during his life*, and not giving power to the *Crown*, as has been erroneously stated.

Nothing came of this, and with the death of the King all was stopped. The consent of the clergy was to the Act of the *King himself personally*; and the Act of Parliament reciting this attitude of the clergy gave power to the *King personally*, and not to the *Crown*, and the whole matter came to the ground.

When Edward VI. came to the throne a fresh Act of Parliament was passed (A.D. 1549) with a different object. The King is still empowered (for a space of three years) to appoint thirty-two persons as before, but they are to *compile fresh Ecclesiastical laws* to be practised in all the Spiritual Courts of the Realm; and

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there is no word now of the clergy being consulted. In this matter nothing was done for two years, and then eight Commissioners were appointed as a commencement, Archbishop Cranmer, Peter Martyr, and six others. For some reason the matter still hung fire, and the Archbishop himself, with the assistance of Peter Martyr, a foreigner, took the matter in hand, and compiled some laws. What relation these had to any work of the original Committee appointed by Henry VIII. we have no means of knowing; all we know is from the Preface which John Foxe wrote when he published the work in 1571. John Foxe says in effect (the preface is in Latin, as is the work itself): 'The object of the King (Henry VIII.) is certainly to be praised, nor perchance are the endeavours of (the Committee) to be otherwise than praised, who then had compiled laws, though they were very much unlike those that follow.' Whatever, therefore, was done by Cranmer and Peter Martyr must be regarded (so far as the English Church was concerned) as having been done by Cranmer alone (for Peter Martyr was not of our Church), and this, too, not as Archbishop, nor as Metropolitan, at the request of Convocation, but simply as Chairman of a Commission appointed by Edward VI. under authority of an Act of Parliament.

Edward VI. died before anything came of this attempt; but the MS. by some means came into the hands of Archbishop Parker, who is said to have revised it to a certain extent, but how far we do not know. The MS., with Parker's emendations, came into the hands of John Foxe, 'the Martyrologist,' who published it in 1571 with a preface signed J. F. He says that if Edward VI. had lived, this code of Ecclesiastical laws would have been made law; but while it was to be greatly deplored that this did not come to pass, yet it was much to be wished that that which was denied to the Church in consequence of the early death of the King would now be supplied to the Church in the more prosperous times of Queen Elizabeth, with the authority of the present Parliament, and the favouring countenance of learned men. 'And,' he adds, 'I earnestly ask that they take in good part this my boldness in issuing the book.'

Whether it was intended as a tentative measure or not, it was issued with the sole authority of John Foxe, though Parker may have connived at, or requested the publication. If so, John Foxe was used as a catspaw.

Be this as it may, the publication fell very flat; it seems to have been very badly printed, as if got up in a hurry. It was intended to be presented to Parliament, and was called for in Parliament by one of the members of the same mind as Foxe. But that was the last that was heard of it there. It may be that one reason of its being laid aside was that in the Preface Foxe calls for a revision of the Prayer Book, which did not suit his views. This of itself would argue that Parker would not be too eager to stand sponsor for the Book.

It was reprinted in 1640 in troublous times, seemingly by private enterprise; and again in 1641 by the Company of Stationers; a copy of this reprint is in my library: A further reprint with corrections was issued by Dr. Cardwell in 1850.

Such is the history of the document, which has been called a 'laborious fiasco,' and, borrowing a happy simile from a dangerous disease, 'a wandering clot of legislation.' It is said to have been compiled by Archbishop Cranmer, with the assistance of Peter Martyr, to have been translated into Latin, or to have had the Latin revised and polished by Walter Haddon and perhaps Sir John Cheke. 'Lumen et splendorem addidit Gualterus Hadonus vir disertus. Quin nec satis scio an Joann. Checi viri singularis eidem negotio adjutrix adfuerit manus.' So says Foxe. It has no further authority; indeed, as we shall see, it would seem to have been deliberately ignored by the Church, and many of its suggestions directly negated.

Indeed, we have reason to be thankful that a good Providence saved the Church of England from the thralldom of such a document.

At the time of its publication by John Foxe in 1571, the Convocation of Canterbury put out certain Canons; and certainly in these there is no evidence that the Canons were influenced favourably by the *Reformatio Legum Ecclesiasticarum*. If that document had been at that time understood to have any force or value, we should have expected to find some similarity; but if anything is to be traced, it would seem to be antagonism.

Take, for example, the Canon on Preachers issued by Convocation, and the Chapter on Preachers in the *Reformatio Legum*.

The Canon commences thus: 'None shall preach publicly in his parish Church unless licensed by his Bishop, nor hereafter shall he dare to preach outside his parish unless he have received authority so to preach either from the Queen's Majesty through the whole realm, or from the Archbishop through his province, or from the Bishop throughout his diocese. But for the future no license shall be valid, or have any authority, unless it have been obtained after the last day of April, 1571.'

In contrast with this read the fourth Chapter of the Title 'Of Preachers' in the *Reformatio*, which is as follows:—

'§ To whom the function of preaching properly pertains.

'The Archbishops should hold the first place in this function of preaching. Let Bishops, Deans, and other dignitaries come next. Nor should these only be occupied in this most sacred duty, but the same power should be yielded to pastors and parish priests in their flock, unless there should be just cause for the Bishop to impose silence upon them.'

The difference here is very marked. The Canon passed by Convocation imposes silence on all who are not specially licensed to preach: whereas the chapter in John Foxe's book would permit all to preach who were not specially silenced. This would show

that the views, or some of them, certainly lacked the acquiescence of Convocation.

As has been said before, the same Convocation of 1571 issued certain regulations about marriages not at all in the direction of the views of the *Reformatio*.

But when, in 1597, and again in 1604, the Church issued Canons on marriage and divorce, they are *toto cælo* opposed to the twenty-one chapters of the *Reformatio* under the title 'De Adulteris et Divortis.' The title of the twenty-one chapters are here given, with here and there a sketch of the substance of the chapter.

1. Adultery to be severely punished.
2. Ministers convicted of adultery.

Their property is to be given to the wife and family, if there are any; if not, to the poor. They are to be transported or imprisoned for life.

3. Laymen convicted of adultery.

Dower to be restored to wife and half her property. He to be transported or imprisoned for life.

4. Wives of ministers or laymen.

They, too, are to be transported or imprisoned for life.

5. *The guiltless person passes to new nuptials.*

When one spouse has been convicted of adultery, the other innocent one may at pleasure proceed to a new marriage.

6. *Reconciliation is to be desired.*

7. *None can leave a spouse at will.*

Sentence must be pronounced, and then the judge, in hope of reconciliation, is to assign a certain time within which a new marriage is not to take place—say a year or six months.

8. *Divorce for desertion.*

If the spouse refuses to return, imprisonment for life; and the other can marry again. If the deserter cannot be found, the other must wait two or three years and then marry; if then the deserter returns, imprisonment for life is penalty.

9. *Divorce for lengthened absence.*

The same penalty as before when deserter returns.

10. *Deadly enmity a ground of divorce.*

11. *Maltreatment at last a ground of divorce.*

12. *Small quarrels, unless perpetual, not a ground.*

13. *Incurable disease does not break wedlock.*

14. *How the accused is to be maintained during the trial.*

15. *Guilt of false accusation.*

16. *Guilt of husband persuading wife to adultery.*

17. *Where both are adulterous.*

18. *Guilt of abetting adultery.*

19. *Separation from bed and board abolished.*

Society of bed and board used to be removed from spouse, in certain crimes, the law of wedlock being still preserved between them. Which law, since it is foreign to Holy Scripture, and has

great perversity, and has brought a sink of evils into marriage, is wholly abolished by our authority.

20. *How incest and harlotry is to be punished in laymen.*

21. *How bastards are to be maintained.*

It will be observed that these are wholly different from any other document professing to emanate from the Church, which this *Reformatio* never pretended to do.

It also will be observed that when in 1597 and again in 1604 the Church spoke out in Canon about marriage, the only divorce allowed was that from *bed and board*, on which the *Reformatio* casts contempt as unscriptural, ridiculous, and harmful; and when divorce was pronounced the parties were required to give bond not to marry again while they both lived.

When some faithful minds were grievously pained at the admission of some old heretical renderings into the margin of the Revised New Testament of 1881, one of the faithful Revisers (Dr. Scrivener) pointed out the value of them, as distinctly showing what had been *deliberately rejected*.

We may say, then, that the chief value of the Apocryphal document, the *Reformatio Legum Ecclesiasticarum*, is, that it distinctly shows what the Church deliberately refused to adopt in the sixteenth century: nay more, what Parliament also refused to consider in 1571.

APPENDIX C.

THE CANONS OF 1603 RECOGNIZED IN CANADA.

It would be natural to suppose that the Canons in force in England in the Church would be regarded as binding on the members of the Church when they settled in the Colonies, until at all events they had been altered or repealed by proper authority. There is, indeed, evidence that such was the case.

That the Canon law about marriage was regarded as binding will be seen in Part VI., 'Divorce in British North America;' but we will here briefly remark on the Canon law in general.

We find that in one of the earliest Acts of Assembly ever passed in British North America relating to the Church of England, the Canons of that Church are laid down as the only rules by which the clergy of the Church of England were to be governed in their official acts.

In the first marriage law passed in Halifax, Nova Scotia, in 1758, there were heavy fines imposed upon the clergy for the omission and commission of certain acts. These were not pleasant; so we find that in a Church law passed in 1759 it was enacted that 'the ministers of the said Church, not conforming themselves to the rules prescribed by the Canons of the said

Church, shall be subject to the censures and penalties incurred therein, and none other, any law, usage, or custom to the contrary notwithstanding.' This, as Uniacke points out, repeals the clauses imposing fines on the clergy.

In the Royal Instructions issued to Thomas Carleton, Esq. (dated August 18, 1784), the first Governor of the newly-established Province of New Brunswick, there is a slight reference which is of interest:—

'77. And you are to take especial care that a Table of Marriages, established by the Canons of the Church of England, be hung up in all places of Public Worship, according to the rites of the Church of England.'

This shows that the Tables of Affinity, established by Canon, were regarded as part of the law of the land; this would show that the Canons were regarded as binding.

One further hint may be found in the first Act about Marriage and Divorce passed and approved by the Crown in New Brunswick. It is sufficient to show that the Canons were regarded as legally binding. The Act provides that when there is no clergyman, a Justice of the Peace may solemnize marriage, and in this case he is to keep a register of such marriages; and such registry is to be taken as good evidence of such marriage 'as the registry of such marriage would be if made by any Parson, Vicar, Curate, or other person in Holy Orders of the Church of England, agreeable to the Canons of the said Church.'

In 1851 the British North American Bishops gave it as their opinion that the Canons are of some authority, but did not define further; except that they said they were 'of opinion that they should be complied with so far as is *lawful* and practicable.'

APPENDIX D.

THE AMERICAN CHURCH.

In the General Convention of the American Church the Joint Committee on Marriage submitted the following Canon, which is still under consideration:—

CANON 13.

Of Marriage and Divorce.

§ 1. If any persons be joined together otherwise than as God's Word doth allow, their marriage is not lawful.

§ 2. Marriage is prohibited by the Word of God, and by this Church, within the degrees of consanguinity and affinity specified in Lev. xviii. 6-18.

§ 3. i. It shall be the duty of ministers to admonish the people from time to time that the Church discountenances marriage in private, and that the public solemnization thereof ought not to be dispensed with, except for good cause and under special circumstances.

ii. No minister shall solemnize the marriage of any person under eighteen years of age, except the parent or guardian of such person be present, or shall have given written consent to the marriage.

iii. No minister shall solemnize a marriage except in the presence of at least two witnesses, each of whom shall be personally acquainted with both parties.

iv. No minister shall furnish witnesses to persons coming to him to be joined together in marriage.

v. Every minister of this Church shall keep a Register of Marriages, in which, at the time of marriage, he shall record the names, birthplace, age, residence, and condition of each party; and the said record, duly transcribed in the said Register, shall be signed by both parties to the marriage, by at least two witnesses, and by the minister who performs the ceremony.

§ 4. i. The law of this Church concerning Divorce is that contained in S. Matt. v. 32, xix. 9; S. Mark x. 11; and S. Luke xvi. 18.

ii. Marriage when duly solemnized may not be dissolved, except for adultery or fornication.

iii. The guilty party in a divorce for adultery is prohibited from marrying again during the lifetime of the other party.

iv. Persons divorced may not be married again to each other, if the woman meanwhile shall have married again.

§ 5. If any minister of this Church shall perform a ceremony of marriage in violation of the provisions of this Canon, he shall be subject to trial, and liable to admonition for the first offence, and to suspension or deposition for a repetition of the same.

§ 6. Persons who shall marry in violation of the provisions of this Canon shall not be permitted to receive the Holy Communion, except upon penitence and avowed final separation. *Provided, however,* that no minister shall in any case refuse the Sacraments to a penitent person in imminent danger of death.

§ 7. Questions touching the facts of any case arising under the provisions of this Canon may be decided by the Ordinary, after such inquiry as he may deem necessary.

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THE GREEK AND ROMAN CHURCH.

'The Bishops for a long time did not govern themselves in this matter according to the Canons of the Church, but in pursuance to the rules of the Imperial laws.'—AVLIFFE, *Parergon*.

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THE GREEK CHURCH.

THE Orthodox Greek Church is said to discourage, but to allow marriage after divorce. The following is the statement of the Archimandrite Dionysius Plaisas in reply to certain questions :—

'My Church tries to conciliate the unhappy couple three months before proceedings for a dissolution of marriage are commenced. But if a conciliation cannot be effected, then the Church herself, and the State, dissolve the marriage. Three months after the Divorce is issued, the Church, according to the Thirteenth Encyclical of the Holy Synod of the Church of Greece, gives permission to either of the divorced to remarry.'¹

The Nestorians, who were at one time the largest community of Christians, have always forbidden such re-marriage.

The Abyssinians practise polygamy.

'In Russia, adultery, sentence to punishment involving loss of civil and political rights, absence, as acknowledged by law, *i.e.* absence for at least five years, the whereabouts of the absentee being unknown,' are grounds for dissolving the marriage bond, according to J. W. Lea.²

But in the Code of Canons of the Greek Church the Apostolical Canon, and the Canon of the African Code, which without exception condemn marriage after divorce, are incorporated ; it will be interesting to see how these are dealt with.

The Canon is : ' If a layman dismiss his wife and marry another, or marry a woman divorced by another, let him be excommunicated.'

On this the renowned Greek Canonist Balsamon (*cir.* A.D. 1180) comments : '*Divorced*, that is a woman yoked from her husband *not according to law.*' He also

¹ *Concerning Divorce* ; a Paper read at Salisbury, 1889, p. 11.

² *Christian Marriage*, p. 26.

says that the former clause of the Canon means, 'a layman dismissing his wife [*παραλόγως*] *unreasonably*.'

Similarly Alexius Aristenus (A.D. 1166), in his Synopsis, has, 'If a man dismiss his wife *without one of the lawful causes*, and marry another, he is excommunicated.' Zonaras (*cir.* A.D. 1150) has much the same.

When the African Canon has to be dealt with, the Canonists say in effect that it was *repealed* by the law about divorce in the *Novellæ* of Justinian, which laid down the lawful causes of divorce. The comment of Balsamon on the African Canon runs as follows:—

'This Synod decrees that a woman that has been removed from her husband is not to marry another, and, again, the husband is not to cohabit with another, but either to remain single or be reconciled; and then the Synod recommends that all should be compelled to do this by Royal Decree. But remark that the 117th Novel of Justinian, in the VII. title of the 28th Book, has altered the law about dissolving marriage; and read the 87th Canon of the Council in Trullo, and the remarks on it, and you will find much on such questions. For the contents of the present Canon, being very much older, are obsolete.'

The Novel referred to is of considerable length, but the causes of divorce are as follows:—

The causes for which a man may send a divorce to his wife: 1. Treason against the Emperor known and not revealed. 2. Adultery. 3. Attempt on the husband's life. 4. Associating and bathing with other men against her husband's will. 5. Attending races, or theatres, or hunts, without her husband's permission.

The causes for which a woman may send a divorce to her husband: 1. Treason against the Emperor known and not revealed. 2. Attempt on the wife's life. 3. If he attempt to prostitute his wife to other men. 4. If he prosecutes his wife for adultery and fails to prove it. 5. If he lives with another woman in the same house as his wife, or in another house in the same city, and refuses to discontinue the habit when charged with it now and again.

Then there are three other causes for which divorce may be given: 1. Impotence from the commencement of marriage. 2. The retirement of either into a monastery. 3. The imprisonment of either for some time.

Thus the Greeks say the old Canons of the Church are repealed by the imperial law.

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THE ROMAN CHURCH.

As will have been seen above (*Canons of the Church*, Nos. 15, 16), the Roman Church in the ninth century probably allowed remarriage after divorce. It is true that it is not said so in so many words, but this is the probable meaning of the Canon. In A.D. 726, Pope Gregory allowed the husband of a sick wife to marry another, if he allowed alimony to the first. On this astounding proposition Gratian remarks: 'This decision of Gregory is altogether contrary to the sacred Canons, yea also to the teaching of the Gospels and Apostles.'

In A.D. 865, Pope Nicolas used language which implied that a husband might murder an adulterous wife. On this Gratian says: 'Nicolas seems to permit husbands to kill their wives because of adultery, or some other crime of the same kind. But ecclesiastical discipline bids criminals to be smitten with the spiritual, not the material, sword.'

But in the Council of Trent the Roman Communion settled that marriage is unlawful after divorce; but in order to satisfy the legates from Venice (who said that there were Greeks under Venetian rule who would not accept an anathema against all who said that the bond of marriage was broken by adultery), the form of the anathema was changed, and issued against those who said that the Roman Church was wrong in maintaining the indissolubility of marriage.¹

But the practice of the Pope in granting all kinds of dispensations in respect of marriage deprives the law of the Roman Church of the respect it would otherwise command.

It is startling to read that in A.D. 1225 William Dens, Vicar of the Church of Mundeham, had two wives, and exhibited a papal dispensation to allow him to have them.

In our own times the Lady Mary Hamilton was divorced from the Prince of Monaco, and married, at Vienna, to a Hungarian Prince; and in September 1888, the Italian, Duke of Aosta, was married by dispensation to his own brother's daughter.

The following extract from the London *Times* of February 9, 1876, will be interesting, as showing how the system of dispensations works:—

¹ See Brent's *Hist. Co. Trent*, p. 754.

'A curious case has been decided in the Irish Rolls Court. A Society had existed for the purpose of providing life annuities for the widows of Constabulary officers, and one of the conditions was that a widow remarrying should forfeit her annuity. The Society had been ordered to be wound up, and in the liquidation proceedings the annuities were capitalized, and a rateable value was paid to each annuitant. The husband of the claimant died in 1869, and in 1875 she went through a ceremony of marriage with the husband of her deceased sister before a Roman Catholic priest in a chapel in the county of Kerry, and the question was whether she had thereby forfeited her annuity, the ceremony being a nullity according to the law of this country, though it was stated to have been celebrated under a special dispensation from the Pope. *After her marriage* she had made the statutory declaration that she was still a widow, and contended that she was entitled to the rateable bulk value of her annuity. His Honour decided that she was legally entitled to the money sought, but commented strongly on her having kept back the real facts from the Court.'

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VI.

DIVORCE IN CANADA.

'Marriage will be a more permanent union where Religion lends
its aid and solemnity to the transaction.'

GOVERNOR CARLETON, 1789.

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VI.

DIVORCE IN CANADA.

IN 1758 the Legislature in Nova Scotia passed an Act about Marriage and Divorce, without any suspending clause reserving the right of the Home Government to interfere. This led evidently to some correspondence, and eventually to the repeal of certain parts of the Act.

Clause 1 of the Act provided that no marriage should be celebrated without the publication of Banns, or license from the Governor.

§ 2. If a clergyman refused to publish the Banns, he was liable to a fine of 50*l.*, and an action for damages.

§ 3. If a clergyman refused to marry a couple, he was liable to a fine of 50*l.*, and an action for damages.

§ 4. Bigamy is declared a felony.

§ 5. This not to extend to divorced parties.

§ 6. The Governor and Council are the Court to determine matters concerning prohibited marriages and divorce.

§ 7. Declares the English law about prohibited degrees binding, and allows Divorce *a vinculo* for impotence, and kindred; and divorce (*i.e.* from bed and board), for adultery, wilful desertion, and withholding maintenance for three years.

§ 8. Incest, how to be punished.

§ 9. Adultery to be punished by fine, imprisonment, and action for damages.

However, in 1759 clauses § 2 and 3 were repealed by an Act which declared that the clergy were to be subject to the penalties of the *Canons* and none other.

And again in 1761 an Act was passed which withdrew 'wilful desertion, and withholding maintenance,' from the causes for which divorce from bed and board might issue, since this was 'inconsistent with the laws of England.'

Sections 4 and 5 are simply a *précis* of the Act 1 Jac. I. cap. 11, § ii. iii. iv.

From section 5 we may learn (as the editor Uniacke

points out) that the divorce referred to was only a divorce from bed and board, since no divorce from the bond of matrimony requires a proviso. The proviso being, Provided nevertheless that if a *divorced* person marry again, he shall not be convicted of a felony under § 4.

In 1786 the Legislature of the New Province of NEW BRUNSWICK began its work, and the House of Assembly passed a long Bill covering the whole question of marriage and divorce. In the 11th section divorce *a vinculo* is granted for precontract, impotence, and kindred. In section 12 'the innocent and injured party' in a judgment of divorce (from bed and board) 'may marry another person.'

The Bill was read the first time on January 19, 1786, passed, and sent to the Council for concurrence nine days afterwards, on January 28. The Council introduced several amendments, some of which did not meet the views of the House of Assembly, and the Bill was dropped for that year.

The particular amendment, which seems specially to have caused the rejection of the Bill, was 'that the several powers hereinbefore given to Justices of the Peace shall only be exercised by them when there is no parson, vicar, or curate, nor any person in Holy Orders within the Parish to execute the same.' The Bill gave unrestricted powers to the magistrate to marry couples at will with the license of the Governor, or publication of Banns.

This seems to be the first declaration in any English Legislature that 'the innocent and injured party' may marry after divorce from bed and board.

In 1787 the Bill was again introduced and passed into an Act with a suspending clause reserving it for 'His Majesty's consideration.' The Council did not insist upon their amendment, that the Magistrate should not officiate when there was a parson at hand.

In this Act (§ 10) it is declared 'that the causes of divorce from the Bond of Matrimony, and of dissolving and annulling marriages, are, and shall be, precontract impotence and consanguinity . . . and no other causes whatsoever.'

This, of course, was the English law of divorce *a vinculo*. In the next clause (§ 11) it runs, 'after a sentence, decree, or judgment of *divorce* given between any persons for the *cause of adultery*, it shall and may be lawful for the inno-

cent and injured party to marry any other person,' &c. This divorce is clearly 'from bed and board only,' as the Act of Nova Scotia of 1758, and 1 Jac. I. 11, of 1603; only, instead of excepting such marriage from bigamous felony, one party only is allowed to marry.

It will be seen in the sequel that the Bishop of London at the time did not perceive the difference between divorce *a vinculo* and divorce *a mensa et thoro*; and the Legislature rather took advantage of the Bishop's mistake.

The Act of 1787 is endorsed (seemingly by the Governor, Thomas Carleton) with the following '*Observation*. This Bill is of so important a nature, and contains so many regulations, that it is passed with a suspending clause for His Majesty's consideration. These regulations are all intended for the greater certainty and notoriety of the marriage contract, which in the Colonies has become a feeble tie; and the Court instituted by this Bill is adopted from the Law of Nova Scotia: with such alterations as seemed requisite to enforce the moral obligations.'

The Bill gave rise to correspondence with the Home Government, who submitted it to the Bishop of London (Beilby Porteus), and sent out the Bishop's observations to the Lieutenant-Governor of New Brunswick. The correspondence is so interesting that it is here printed for the first time.

Copy of a Letter from Lord Sydney to the Lieutenant-Governor.

'Whitehall, February 24, 1789.

'SIR,—The Lords of the Committee of Privy Council for Trade having had under their consideration an Act passed in the Province of New Brunswick, intituled "An Act for regulating Marriage and Divorce, and for preventing and punishing Incest, Adultery, and Fornication"; and having received from the Lord Bishop of London several observations, which have occurred to his Lordship upon the perusal of the said Act; agreed that it would be advisable to postpone offering any opinion to his Majesty upon the said Act, until farther information upon the several particulars pointed out by the Lord Bishop of London shall be received. I transmit to you the inclosed copy of the said observations, and am to desire that you will communicate the same to the Bishop of Nova Scotia, and consult with him on the propriety of confirming or disallowing the several provisions of the Act in question; and also that you will also transmit to me, with all convenient speed, your own opinion as well as that of the Bishop of Nova Scotia upon the said Act, in whole or in part,

jointly or severally ; and in case you shall both be of opinion that any farther provision may be necessary to be enacted for the purposes of the said Act, it is wished that you would state the same to me for their Lordships' information and consideration.

'I am, Sir, your most obedient humble servant,

'SYDNEY.'

(2) *Copy of the Bishop of London's observations on the Act for Regulating Marriage and Divorce, &c.*

'I have read over the Act lately passed in New Brunswick for regulating Marriage and Divorce, &c.

'In order to form a just opinion of it, it seems necessary to know whether any laws respecting Marriage and Divorce existed before in that province, and what those laws were.

'More particularly it should be known whether by the law or custom of that province marriages have been usually performed by Justices of the Peace, and whether in that case any Rite or Ceremony was used, or whether any and of what kind is now to be used in the celebration of Marriage by Laymen.

'It seems to be left undecided by the Act whether the Clergyman who performs the marriage must be of the Church of England, or whether he may be of any other Church or sect.

'Before the late Marriage Act precontracts were among the causes for dissolving marriage in England, as they are in this Act. But this was found highly inconvenient, and the taking away suits for contracts of marriage, where marriage has never been actually solemnized, has always been considered as one of the most beneficial provisions of that Act.

'Among the causes of divorce which this Act enumerates, it is very remarkable that ADULTERY is not one ; and yet it declares that no other causes of divorce whatever but those enumerated in the Act shall be allowed.

'Notwithstanding this, in the very next clause, it evidently supposes that ADULTERY may be a cause of Divorce. And it enacts that after a sentence of Divorce for Adultery it shall be lawful for the innocent and injured party to marry another person, provided that there is no just cause to suspect that the innocent party was consenting to the Adultery committed by the other.

'Under the Acts of Parliament passed in England for the dissolution of marriages on account of Adultery, and to enable the party complaining to marry again, the guilty party is held as much at liberty to marry again as the innocent one ; and, indeed, it is not easy to conceive how a marriage can be perpetually binding on one party to it and not on the other. In cases where it appears that one party was consenting to the Adultery committed by the other, no sentence of separation or Divorce ought to be pronounced.

'It appears to me very objectionable in this Act, that, in a

matter of so much importance, both to the parties themselves and to their children, as marriage and divorce, no provision is made for an appeal of any kind.'

(3) *Extract from a Letter of the Lieutenant-Governor to Lord Sydney, respecting the Marriage Act, dated 31st of July, 1789.*

'Adultery is not considered in this Act as a cause of Divorce from the Marriage Bond, but (agreeably to the laws of England) only from Bed and Board. It is, therefore, subjected expressly with other delinquencies to the cognizance of the Governor and Council; and to remedy any particular case, it provides for the remarriage of the innocent party by the special license of the Court. The expediency of this license is, I confess, questionable; but no law can pass here as in England, for a particular divorce; and the question was whether this mode, or a dissolving of the Marriage Contract, should be preferred.

'I heartily subscribe to the observations respecting pre-contracts, and wish they had been so restricted here.

'Respecting the want of appeal, I can only say that causes of this kind should not be too easily agitated—that they are by this law to be heard in the first instance before the most responsible persons of the province, the Governor, or Commander-in-Chief, for the time being, and His Majesty's Council—and that in cases of magnitude where perhaps the spirit of party or faction might be supposed to influence, an appeal to the King in Council may be construed from the Royal instructions.

'This Act has the merit of limiting in some degree the indiscriminate celebration of marriage allowed by the laws of Nova Scotia, and in many respects defines what is there, perhaps, left too much at large. But, on the whole, I do not approve of holding up marriage so openly in the light of a merely civil contract. The Justices might have been restrained from officiating in parishes where a clergyman resided; for Marriage will (generally speaking) be a more permanent union where Religion lends its aid and solemnity to the transaction; and I cannot help thinking the manners of the people require the causes of divorce to be narrowed as much as may be, consistently with the nature of the contract, and that the liberty of remarrying by permission had better have been omitted.

'Clergymen of every denomination are in the habit of celebrating marriage through the Colonies, and this Act only aims at restraining and regulating them.'

Here remark that the Bishop of London fails to see what the Act clearly intended—viz. to make a keen distinction between divorce *a vinculo* and that *a mensa et thoro*. The divorce *a vinculo* was only to be granted in such cases as certain precedent impediments to marriage rendered

the marriage a nullity—viz. impotence, precontract, consanguinity, and such like. These would render the marriage contract a nullity, and *ab initio* void. Adultery, being subsequent to marriage, is regarded only as a proper cause for a temporary separation—that is, a divorce *a mensa et thoro*. The Act says that no other cause whatever than certain antecedent or precedent impediments should break the bond of marriage. But the Bishop of London did not observe this distinction, and suggested that adultery should be made a cause for divorce *a vinculo*.

The answer of the Lieutenant-Governor Carleton shows that he appreciated the difference which the Bishop overlooked; and Governor Carleton and his advisers were certainly in the right.

However, in 1791 (there does not seem to have been a meeting of the Legislature in 1790) the Bill was introduced afresh, and passed with the alterations hinted at or suggested by the Bishop of London; and now for the first time, and this in consequence of the suggestion of a Bishop of the Church, adultery was made one of the ordinary causes of divorce from the bond of marriage. This being the case, there was no need of any license or permission to the innocent party to marry; for the *bond* being broken, both parties were free to marry others. At the same time the clause in the former Bill, which recognized separation from Bed and Board, remains the same in the new Act; though as adultery is now held to authorize divorce from the Bond there is no longer any cause recognized for separation from Bed and Board.

There is evidence in the original of this Act of very great care. The Bill is altered and amended and clauses are introduced and others struck out, so that in some parts it is rather difficult to be quite certain of the sequence of clauses or words. But the MS. is more accurate than the printed copy of 1805, which speaks of the '*rights* of the Church,' whereas the MS. has, accurately, *rites*.

There was an attempt made to allow of an appeal as suggested in the Bishop of London's letter, but it was ultimately struck out. The right of appeal was introduced into Clause 5, but it was struck out.

Though by successive Acts of Assembly since 1791 almost all the Act has been repealed, yet the causes for divorce from the bond of matrimony still remain the same to the present day; and adultery remains a cause of

divorce from the Bond to the present. It was introduced in answer to the 'Observation' of Bishop Beilby Porteus, which 'Observation' was clearly due to an oversight.

It may be noticed in passing that, though this seems to be the first case of the admission of adultery to be a cause for divorce *a vinculo* in a general and not special English law, yet in Massachusetts, in the Act passed March 16, 1786, and in the Statute in New York passed March 30, 1787, adultery is admitted to be a cause for dissolution of marriage.

In NOVA SCOTIA at the present day a divorce from the Bond of matrimony may be granted for 'impotence, adultery, *cruelty*, or kindred within the degrees prohibited.'

In PRINCE EDWARD ISLAND, Cruelty is not a cause for divorce *a vinculo*, but the causes are 'impotence, adultery, and consanguinity,' as in New Brunswick.

Thus much for the Maritime Provinces.

In Canada proper—that is, in Quebec and Ontario—the procedure is different, and is similar to the process in England before 1857. Special Bills for divorce in individual cases have to be introduced into Parliament, and they have to be there discussed before they are passed. It seems that from 1867 to 1888 twenty-three Bills have been passed in the Dominion Parliament for divorce because of adultery, and ten such applications have been rejected.

This latter information (about Quebec and Ontario) is due to the courtesy of Mr. J. A. Gemmill, the author of a well-known book on Parliamentary Divorce in Canada.

