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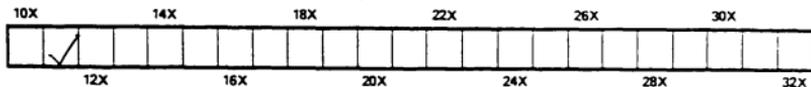
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1885

THE MARRIAGE QUESTION :

Facts, Opinions and Decisions of
Church Courts.

By WILLIAM GREGG, D.D.,
Professor of Apologetics and Church History, Knox College, Toronto.

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THE MARRIAGE QUESTION.

According to the Westminster Confession of Faith, to which Presbyterian ministers, elders and licentiates are required to profess adherence: "Marriage ought not to be within the degrees of consanguinity (relationship by blood) or affinity (relationship by marriage) forbidden in the Word; nor can such incestuous marriages ever be made lawful by any law of man, or consent of parties, so as these persons may live together as man and wife. The man may not marry any of his wife's kindred *nearer in blood* than he may of his own, nor the woman of her husband's kindred *nearer in blood* than of her own." In Lev. xviii. a man is forbidden to marry his own sister, aunt or niece—the first two expressly, the third by necessary inference, and, therefore, according to the Confession, he may not marry his wife's sister, aunt or niece.

In 1884, a Committee of the General Assembly of the Presbyterian Church in Canada, appointed in the preceding year, submitted a report to the effect that while, in their judgment, the Mosaic Law of incest is of permanent obligation; yet that, in their opinion, the clause in the Confession—"A man may not marry any of his wife's kindred *nearer in blood* than he may of his own"—is not sufficiently sustained by the authority of Scripture; and that they recommend that Church discipline shall not be exercised in regard to marriage with a wife's sister, wife's aunt and wife's niece. *Only five members* of the Committee appointed by the Assembly were present when the subject was considered, and *only three*, including the chairman, were in favour of the above mentioned extraordinary opinion and recommendation.

All agreed that the Mosaic Law is of permanent obligation, but *only three* denied the sufficiency of the Scriptural warrant for the teaching of the Confession, and recommended that no discipline should be exercised on offenders. At the meeting of the Committee it was alleged that a minority report would not be received by the Assembly, and therefore a minority report was not prepared. The report, however, for which three members of the Committee voted, contains a brief statement of the arguments for and against the position of the Westminster Confession.

The report was sent for consideration to the Presbyteries in accordance with the following motion: "That the Assembly, *without committing itself to the conclusions of the report*, send it down to Presbyteries for their consideration, with instructions to report to next Assembly." The report has been brought before many of the Presbyteries, but in few does it seem to have been carefully considered. Some have decided without discussion. In scarcely any has attention been given to the question of marriage with a wife's aunt or niece, which has never been seriously discussed in the Courts of our Church. Some Presbyteries which, apparently without serious consideration, have decided in favour of the conclusions of the Committee may possibly have been influenced by its report, on the supposition that its members were numerous and unanimous, and in ignorance of the fact that only five were present at its meetings and that only three, including the chairman, favoured the opinion that the article in the Confession was not sufficiently supported by Scripture, and the recommendation that discipline should not be exercised in regard to marriage with a wife's sister, aunt or niece.

It is possible, also, that some members of Presbyteries, as well as the public generally, have been, to some extent, influenced by the misleading statements of the numerous pamphlets and leaflets with which the country has been

flooded by the English Libertarians, who have organized themselves as the Marriage Reform Association, with the special object of obtaining the repeal of the laws against marriage with a deceased wife's sister. In these publications facts are misstated, opinions misrepresented and the truth suppressed. "One of the gross frauds (says Dr. James Gibson, of the Free Church College, Glasgow, in his work published in 1854) practised in the publications of the London Association, is to take some incidental opinion on some one point of discussion, and then to exhibit it as *the* opinion of the parties on the very point at issue itself. Thus we have both Patrick, Archdeacon Hale, Calvin, and others dealt with ; so that the ordinary reader of these fly-leaves believes them to be hollow in favour of, instead of being hollow against, such marriages. In this way no ordinary reader can possibly know the truth ; and the opinions of society are thus attempted to be influenced by a system of gross Jesuitical perversion and fraud. These are strong expressions. We not only use them, however, in the language of their authorities, 'calmly and deliberately,' but we have made them good. The said Association have published no less than *fifty-one* pretended facts, and about *180* *alleged* opinions of as many persons, and no human being could discover from their perusal that there are such texts as Lev. xviii. 16 and xx. 21 in existence. In only two does there seem an allusion to Lev. xviii. 16, while the reference in one is erroneously given as Lev. xviii. 6, and the other does not refer to Lev. xviii. I have carefully looked over a publication of theirs, containing a large collection of speeches, pamphlets, opinions and answers by noble and learned lords, bishops, divines and lawyers—the collection bearing on the title page to be the *sixth thousand*—and I have not been able to discover a single reference to Lev. xviii. 16 or xx. 21, and yet these are the texts on which their opponents mainly rest the controversy. Nothing in James's Corruption

of Scripture, Councils, and Fathers, in maintenance of Popery, can surpass this discreditable attempt to hide and pervert the truth."

As the marriage question is to be brought before the General Assembly of 1885, and must again be submitted to Presbyteries before the opinion and recommendation of the three members of Committee can be sanctioned, I deem it proper to submit to my fathers and brethren in the ministry and eldership, and to the Christian public, a collection of facts, opinions and decisions which may help them to arrive at correct conclusions on the subject, and which may be of special service in neutralizing the pernicious misrepresentations of the Libertarian tracts. Another purpose of great practical importance may be served by this collection. In consequence of the action of the Assembly's Committee, and of some Presbyteries, as well as the evil influence of the Libertarian tracts, and the bad example set by several respected members of churches, some persons may be tempted to contract marriages within the forbidden degrees, which may prove the cause of life-long remorse and misery. It is to be hoped that the prayerful consideration of the following facts and opinions may induce them to resist the temptation. These should convince them that it is, at least, extremely doubtful whether it is right for a man to marry his wife's sister, aunt or niece; or whether it is right for the sister, aunt or niece to marry him; and that such marriages ought to be avoided on the principle implied in the words of the Apostle in reference to another case: "*He that doubteth is damned* if he eat, because he eateth not of faith; for whatsoever is not of faith (that is, persuasion of its lawfulness) is sin."—Rom. xiv. 23.

Although the conclusions of the three members of the Assembly's Committee are favoured by a few hundred eminent ministers and professors of theology in Europe and America, as well as by the English Libertarians, the collec-

tion of facts and opinions I now proceed to submit will make it manifest that they have been and are discountenanced by the overwhelming majority of God's professing people in all ages—by those Jews who were least influenced by the traditions of the fathers, by the decisions of the ancient Christian Church, of the Roman Catholic Church, of the Greek Church, of the French Protestant Church, of the Waldensian Church, of the Reformed Dutch Church, of the Church of England, and of the Presbyterian Churches in the British Isles, in the United States of America, and in the Dominion of Canada.

1. *No case is mentioned in Scripture, so far as I can find, in which any man, Jew or Gentile, Christian or heathen, is said to have married his deceased wife's sister.* It has been asserted by Libertarians that such marriages are desirable for the sake of the children of the deceased sister, and have "always been permitted and practised by the Jewish people." If desirable and permitted, might we not expect to find, at least, some examples recorded in Scripture, in which there is the record of numerous marriages, lawful and unlawful? Can any one point to an example of this kind found in the sacred record?

2. While the great majority of the Jews, since their crucifixion of Christ, have favoured marriage with a deceased wife's sister, *it is condemned by the smaller sect of Jews who reject tradition and acknowledge only the authority of the Old Testament Scriptures.* "One whole sect among the Jews (says Dr. Lindsay, Professor of the U.P. Church, Scotland), and these by no means men of little name, viz., the Karaites, were decided in their opposition to marriage with a wife's sister. They maintained that the substance of the law of incest lay in Lev. xviii. 6, and that the various particular prohibitions which follow this general principle were to be considered specimens of the extent to which kindred was to be counted; and, accordingly, they supplied all

analogous cases, and held that the law which forbade a man to marry his brother's wife, equally debarred him from marrying his wife's sister. And they denied that the eighteenth verse of the chapter warranted any inference in favour of this connection. With regard to the Talmudists, again, it is by no means clear that they were unanimous in favour of the lawfulness of marriage with a wife's sister, though, in general, they approved of it. It is certain, however, that Maimonides, one of the greatest names among the Jews, declares that this connection was forbidden as well as marriage with a brother's wife."

3. "Selden states, on the authority of Gaius, Paulus and Ulpian, that before Christianity was received as the religion of the Roman Empire, step-mother, mother-in-law, step-sister, brother's wife, wife's sister (*uxoris maris soeror*, sister of former wife), were all forbidden by public authority. The accuracy of this view, so far as the period referred to is concerned, has been questioned by some ; but no man can question that under Constantius and Constans all these degrees of affinity were legal barriers to marriage, and that the children sprung from such connections were declared to be spurious. The same law was confirmed by Valentinian, Theodosius and Arcadius, who declare that the liberty of marrying either brother's wife or two sisters is wholly interdicted, no matter how the prior marriage may have been dissolved, whether by death, desertion or divorce."—(*Dr. Lindsay's Enquiry*, p. 189.)

4. "When S. Basil the Great ascended the Archiepiscopal throne of Cæsarea, he forbade that a husband, after the death of his wife, should marry her sister ; and when some one, of the name of Diodorus, reproached him upon the subject, Basil defended himself in a letter, which has been preserved, and proved that *such marriages had always been prohibited* at Cæsarea. The Spanish fathers of Elvira (the Synod of Elvira met in 305 and 306) shared S. Basil's opin-

ions, as also did the Synod of Neocæsarea of 314, Can. 2, as we shall see hereafter. It is well-known that, according to canon law, these marriages are both forbidden and declared to be invalid.”—(*Hefele's History of the Councils*, p. 164.)

5. “During the whole of the eight first centuries marriages were never allowed, either by civil or canon law, in the first degree, *whether of consanguinity or affinity*, nor, with one exception—that of cousins—in the second degree.” “The first degree of affinity comprises the step-mother, the wife’s mother, the wife’s daughter, the son’s wife, *the wife’s sister*, the brother’s wife.” “The second degree of affinity comprises the following: grandfather’s wife, wife’s grandmother, father’s brother’s wife, mother’s brother’s wife, *wife’s father’s sister*, *wife’s mother’s sister*, son’s son’s wife, daughter’s son’s wife, wife’s son’s daughter, wife’s daughter’s daughter, brother’s son’s wife, *sister’s son’s wife*, *wife’s brother’s daughter*, *wife’s sister’s daughter*. With regard to these there has been no difference of sentiment.”—(*Smith’s Dictionary of Christian Antiquities*, article on *Prohibited Degrees*, by Rev. F. Meyrick, M.A.)

6. Dr. Pusey, referring to the statement of a witness before Her Majesty’s Commissioners that the prohibition of marriage of a deceased wife’s sister was founded in early times on a mistaken view of Lev. xviii. 18, says: “It may be stated confidently that *no one Father does rest his objection upon that verse*. The passage on which they rest is that containing the general principle, verse 6: ‘None of you shall approach to any one that is near of kin to him, to uncover their nakedness,’ under which this particular case falls, or on the parallel case of the marriage with the brother’s widow.”—(*Dr. Gibson, on Marriage Affinity Question*, p. 22.)

7. “The Romish canonists made a very clear distinction between the marriages forbidden in Leviticus, *of which a wife’s sister was one*, and those which are prohibited by Rome on the ground of spiritual affinity, viz., that the for-

mer were forbidden by divine, natural, or positive law. It is, at least, but a weak, as well as unfair invention, to make the canons, or laws of the Church, passed before there was a Pope recognized by any section of the Church, responsible for the decrees—scriptural tyrannical, enslaving, or persecuting, as the case may be—passed by Popes and Councils 800 or 1,000 years thereafter.”—(*Dr. Gibson, on Marriage Affinity Question, p. 21.*)

8. Cardinal Henry Edward Manning, in a letter dated May 10, 1882, in order to correct a misrepresentation of his own views and those of other Roman Catholic dignitaries, thus writes: “(1) The law of the Catholic Church forbids and annuls marriage with a deceased wife’s sister. (2) The law of England on this point is, to this moment, Catholic, and supports the discipline of the Church. (3) The holy see can alone dispense in such cases; and it never dispenses except, first, *rarely*; second, with reluctance; third, for grave reasons, and to avoid greater evils.”—(*Opinions, etc., Edited by J. P. Allen, p. 174.*)

9. Dr. E. B. Pusey thus wrote to Lord Dalhousie on May 16, 1882: “In regard to your Lordship’s question, whether I believe marriage with the deceased wife’s sister to be prohibited by the Levitical law, I have no doubt that it is prohibited by Lev. xviii. The literal translation of the words is: ‘None of you shall approach to any flesh of his flesh to uncover their nakedness; I am the Lord.’ They were universally understood to include the near relations of her who, by marriage, had become ‘one flesh’ with her husband. This continues on from the earliest times of which we have any notice—before the Council of Nice, to the dispensation of Alexander VI. (Borgia), at the close of the fifteenth century. For 1,508 years the unlawfulness of this marriage was unquestioned, until it was violated by the dispensation of a Pope stained by almost every vice.” “The law of the Church rested on Lev. xviii. 6. The omission of the daugh-

ter among the cases specifically prohibited, shows that the specific prohibitions were not meant to be exhaustive.”— (*Opinions, etc., Edited by T. P. Allen, p. 73.*)

10. The following are some of the conclusions arrived at by Dr. James Gibson, in his learned and able work on the Marriage Affinity Question, in which he discusses especially the question of marriage with a deceased wife's sister: “That the first decisions of the Christian Church on the question, of which we have any record, are against the lawfulness of such marriages, and assume that it never was otherwise in the Christian Church.” “That the judgment of the Church, down to the period of the Reformation, was uniformly to the same effect.” “That this uniformity could not be attributed to the corruptions of the Papacy, which only added other prohibitions neither warranted by Scripture nor early custom.” “That it is, therefore, an entire misrepresentation of historical fact to assert that the doctrine which maintains such marriages are unlawful is derived from Popery and the canon law.” “That the canon law professed, on this question, to be based on Scripture, particularly on Lev. xviii. 16, xx. 21, and the relative Scripture principles.” “That to the Reformation—that is, for 1,500 years—there was only one opinion in the professing Christian Church, viz., that such marriages were unlawful.” “That all the Churches of the Reformation, *without any exception*, held such marriages to be unlawful, as proved by their codes of discipline and creeds, as well as by universal ecclesiastical law.” “That this continued to be universal till a comparatively very recent period.” “That in all countries *which have professed to recognize the authority of the Bible, as a basis of human legislation*, such marriages have been accounted unlawful.”

11. Dr. J. J. Janeway, in his treatise entitled “Unlawful Marriage,” thus writes (page 32): “To show the views entertained by the *Protestant Churches of Europe*, we sub-

mit for consideration the following acts of the National Synod of *France*. In the second National Synod, held at Poitiers in the year 1560, the question of the lawfulness of the marriage under discussion was decided. The following is their record: 'May a man lawfully espouse the sister of his deceased wife, who has left him children begotten on her body by him? To which was answered: That this is in no wise lawful nor expedient, and the Church must see to it that no such marriages are solemnized in it.'

12. "In France, marriage between brother-in-law and sister-in-law was first legalized under the Republic, by the law of 20th September, 1792; but the consequences were such that they were afterwards completely interdicted by the Code Napoleon. Another change took place in 1832, relaxing the stringency of this Code, but not by any means repealing it. And it appears from the first report of the Marriage Law Commissioners, that the law forbids all such marriages; prohibition is the rule, and dispensation is the exception. And not only so, but dispensation is granted for marriage between uncles and nieces, as well as between brothers-in-law and sisters-in-law."—(*Dr. Lindsay's Inquiry, p. 144.*)

13. In his Commentaries, *John Calvin* thus writes on Lev. xviii. 18: "*Neither shalt thou take a wife to her sister.*—By this passage certain forward persons pretend that it is permitted, if a man has lost his wife, to marry her own sister, because the restriction is added, not to take the one in the lifetime of the other. From whence they infer that it is not forbidden that she should succeed in the place of the deceased. But they ought to have considered the intention of the Legislator from His own express words, for mention is made not only of incest and filthiness, but of the jealousy and quarrels which arise from hence. Nor can we come to any other conclusion from the words of Moses: for if the turpitude of a brother is uncovered *when his brother*

marries his widow, no less is the turpitude of a sister uncovered when her sister marries her husband after her decease."

14. "In the year 1816. the venerable Dr. John W. L. Livingston, Professor of Theology in the Seminary of that (the Reformed Dutch) Church, prepared and published a dissertation on this question at the request of the General Synod. It is able and learned. As early as 1589, *Holland*, the Doctor shows, declared in an ordinance: That no person related in blood or by affinity within the forbidden degrees shall be permitted to cohabit or be married under penalty of being declared infamous and subjected to corporal punishment and heavy fines, and, if they persisted in their crime, to banishment. In another ordinance the forbidden degrees are enumerated, and it is declared 'that no man may marry the widow of his deceased brother, nor may any woman marry the husband of her deceased sister.'" (*Janeway on Unlawful Marriages, p. 10.*)

15. "To prove what construction is put on Lev. xviii. 16 by the *Reformed Dutch Church*, the Doctor (John H. Livingston) quotes from the marginal notes of the translators appointed by the National Synod of Dortrecht, held in 1618 and 1619, the following words: 'From this law it necessarily follows that a woman who has been married to one brother, may not, after his death, marry with another brother; and upon the same principle, a man who has been married to one sister, may not, after her death, marry the other sister.' He quotes also their note on verse 18, which is as follows: 'It consequently can by no means be concluded that the husband after the death of his wife may marry her sister.'" (*Janeway, p. 11.*)

16. "In the year 1797, the question was brought up from the Particular Synod (of the Reformed Dutch Church in America) 'Is it lawful for a man to marry his deceased wife's sister?' to the General Synod, who answered the question in the negative." (In 1842, the Reformed Dutch Church

departed from its famous uniform practice and that of the Church in Holland, and rescinded the resolutions forbidding a man to marry his deceased wife's sister.) (*Janeway. pp. 10, 14, 15.*)

17. Through the Rev. D. Stewart, of Leghorn, the following statement was obtained, in 1853, of the principles of the Waldensian Church from the Rev. Dr. J. P. Revel, its Moderator: "As to the principles maintained by our Church respecting marriages between brothers and sisters-in-law, they are those which we find in the Holy Scriptures. Our ecclesiastical discipline, reviewed in 1839, says: 'Marriages between brothers-in-law and sisters-in-law, uncles and nieces, aunts and nephews, and between relations at one degree more are forbidden.' I find the same prohibition in the acts of the Synods of 1833, 1828, 1801 and 1798. Our civil law does not permit alliances between a brother-in-law and a sister-in-law, that is to say: *between a widower and the sister of the deceased wife*, no more than between a widow and the brother of the dead husband. It has sometimes happened that the king, by a *special decree*, has authorized such a union, and pastors have, *contrary to our discipline*, blessed it. Nevertheless, since the Constitution, the king's ministers reject on principle demands of this nature." In reference to this testimony, Dr. Gibson says: "This is a proof, among many others, that the opinion of Churches on the special relations prohibited, is to be found almost universally in their codes of discipline and synodical acts, rather than in their creeds, which only contain general principles, but do not define the specialties of their application. It is either ignorance of, or inattention to this fact that has made Dr. Eadie say: 'Out of fifteen Protestant confessions that of Westminster is the only one which formally enacts forbidden degrees.' The Westminster Confession does not 'formally enact forbidden degrees.' It only declares the general principle which involves them and determines them." (*Gibson on Marriage Affinity, pp. 26, 27.*)

18. Marriage with a deceased wife's *sister, aunt or niece* is held to be unlawful by the canons of the Church of England, to which minister of the Church of England in England, Ireland and the Dominion of Canada profess adherence. The ninety-ninth canon (A.D. 1603) reads as follows: "No person shall marry within the degrees prohibited by the laws of God, and expressed in a table set forth by authority in the year of our Lord 1563. And all marriages so made and contracted shall be judged incestuous and unlawful, and consequently shall be dissolved as void from the beginning; the parties so married shall, by course of time, be separated, and the aforesaid table shall be in every church publicly set up and fixed at the charge of the parish." The table referred to is that known as Parker's Table, and is inserted in the Book of Common Prayer.

19. In his Annotations, the learned *Matthew Pool*, author of the *Synopsis Criticorum*, thus comments on Lev. xviii. 16: "Neither in his lifetime, nor after his death, and therefore a woman might not marry her husband's brother, nor *might a man marry his wife's sister, either before or after his wife's death*, for so all the prohibitions are to be understood; which will give light to verse 18. But God, who can undoubtedly dispense with His own laws, did afterwards make one exception to this rule, of which see Deut. xxv. 5."

20. Thomas Scott, in his Commentary on Lev. xviii. 6-17, says: "It is elsewhere enjoined that if a man died without issue, his surviving brother should marry his widow (Deut. xxv. 5-10). But as this appointment respected special purposes under the Mosaic dispensation, the prohibition of marrying a brother's wife is absolute to us: and *by parity of reason*, that of a *woman marrying the husband of her deceased sister*."

21. Matthew Henry, in his Commentary on Lev. xviii., says: "The relations forbidden are most of them plainly

described; and it is *generally laid down as a rule*, that what relations of a man's own he is bound up from marrying with, the *same relations of his wife* he is likewise forbidden to marry with, for they two are one."

22. "We believe (says Dr. Gibson) we might hazard the assertion, without any very formidable contradiction awaiting us, that there is not any Christian commentator of real note in the Christian world as a commentator and expositor of Scripture who holds the out-and-out doctrine, that by the law of God, as given by Moses, marriage with the sister of a deceased wife is lawful." (*Marriage Affinity Question, p. 101.*)

23. The Westminster Assembly of Divines, which condemned marriage with a deceased wife's sister, aunt or niece, was composed of the most distinguished divines of the Episcopalian, Presbyterian and Independent Churches of the seventeenth century; adherence to the Confession of Faith prepared by the Assembly is solemnly professed at the time of their being licensed or ordained by licentiates, elders and ministers of the Presbyterian Churches in Scotland, England, Ireland, Canada, and the United States of America.

24. During the present century a large *number of unions* has been effected between different branches of the Presbyterian Church in England, Ireland, Scotland, Canada, the United States and Australia; but although modifications were proposed and adopted by the uniting bodies, in respect to some points in the Westminster Confession, *no modification was made in respect to the article which condemns marriage with a deceased wife's sister, aunt or niece.*

25. In 1851, an appeal was made by ministers and professors of theology of Scotland to the Nonconformist ministers of England, urging them, by arguments *based on Scripture, social expediency, history and authority*, not to lend their influence to efforts which were made to repeal the law for-

bidding marriage with a deceased wife's sister. This appeal was signed by the following ministers and professors of the *Established, Free, United Presbyterian, Reformed Presbyterian* and *Original Secession* Churches: Charles J. Brown, D.D., Free Church; James Begg, D.D., Free Church; William Binnie, D. D., Professor of Theology, Reformed Presbyterian; David Brown, D.D., Professor of Theology, Free Church; Robert Buchanan, D.D., Free Church; John Cairns, D.D., Professor of Theology, United Presbyterian Church; Robert C. Candlish, D.D., Principal of Free Church College, Edinburgh; Thomas J. Crawford, D.D., Professor of Theology, Established Church; George C. M. Douglas, Professor of Hebrew; Alexander Duff, D.D., LL.D., Professor of Theology, Free Church; Patrick Fairbairn, D.D., Principal of Free Church College, Glasgow; James Gibson, D.D., Professor of Theology, Free Church; William H. Goold, D.D., Professor of Theology, Reformed Presbyterian Church; Thomas Guthrie, D.D., Free Church; N. McMichael, D.D., Professor of Church History, United Presbyterian Church; Alexander McEwan, D.D., United Presbyterian Church; J. Macrae, D.D., minister, of Howick; William Marsdale, D.D., United Presbyterian Church; Alexander F. Mitchell, D.D., Professor of Theology, Established Church; Matthew Murray, D.D., Professor of Theology, Original Secession; Robert Nisbet, D.D., Established Church; Andrew Somerville, D.D., United Presbyterian Church; William Stevenson, D.D., Professor of Divinity, Established Church; Andrew Thompson, D.D., F.R.S.E., United Presbyterian Church.

26. "An argument in defence of marriage with a wife's sister is often grounded upon a consideration of the benefits which would accrue to a young family left without a mother's care: Who so suitable to become their stepmother as their own mother's sister, who already cherishes for them much of a mother's love? But there are two sides to every ques-

tion. It is not considered by those who harp upon this string, how many motherless children would be left destitute of an affectionate aunt's superintendence, if the law were changed. A young, unmarried female cannot with propriety live under the same roof with an unmarried man, whom it is quite legal and suitable for her to marry. This is a universal feeling in society, and it is grounded upon right and proper considerations. There are multitudes of virtuous females who would not, on any account, place themselves in such a position. The probability, therefore, is, that far more families of motherless children would be deprived of the kindly care of an aunt, if the law were changed, than would obtain benefit from having their aunt become their stepmother. This would certainly be the case, unless marriage took place between widowers and sisters-in-law in the majority of instances." (*Lindsay's Inquiry*, p. 149.)

27. "As strong an argument, too (as that from the marriage of a wife's sister accruing to a young family left without a mother's care), might be made out in favour of marriage between a widow and her husband's brother. Think of a widow left with a numerous and helpless family. What an advantage would it be to these children that their father's brother should become their father and protector! But these are the very circumstances in which God of old declared marriage with a brother's wife to be unclean and abominable. No; the laws of marriage rest on totally different principles." (*Lindsay's Inquiry*, p. 149.)

28. Dr. J. A. Hodge, in his treatise on Presbyterian Law, published in 1882, mentions (pp. 100-101) that the Synod or Assembly of the Presbyterian Church of the United States has judicially decided that the following marriages are unlawful, and render the parties liable to discipline: Marriage with a brother's widow; with a *wife's brother's daughter*; with a *deceased wife's sister's daughter*; and with a *deceased wife's sister*; and that "in 1879 the Assembly, in answer

to overtures proposing that constitutional steps be taken toward amending the Confession of Faith by the omission of the sentence which covers the matter of the marriage of a deceased wife's sister, resolved—"That in the judgment of the Assembly, it is not advisable at this time to take any action on this much-disputed subject." It is true that the General Assembly does not enforce discipline on persons marrying the sisters of their deceased wives, but it has not ventured to repeal the law.

29. "All that the passage (Lev. xviii. 18) teaches is that if a man chooses to have two wives at the same time, which the law allowed, they must not be sisters; and the reason assigned is, that it would bring the sisters into a false relation to each other. *This leaves the question of the propriety of marrying the sister of a deceased wife just where it was.* This verse has no direct bearing on that subject. The cases not expressly mentioned in Lev. xviii., *although involving the same degree* of kindred as those included in the enumeration, are: (1) A man's own daughter. *This is a clear proof that the enumeration was not intended to be exhaustive.* (2) A brother's daughter. (3) A sister's daughter. (4) A maternal uncle's widow. (5) A brother's son's widow. (6) A sister's son's widow. (7) *The sister of a deceased wife.*" (Dr. Charles Hodge's *Systematic Theology*, vol. III. p. 416.)

30. In May, 1869, the General Assembly of the United Presbyterian Church of North America sent to Presbyteries an overture on the question whether the article in the Westminster Confession—"the man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of her husband's kindred nearer in blood than of her own"—be repealed. In 1870, the overture was rejected by the following vote: in favour of repeal, 127; against it, 536; not voting, 65.

31. In a letter dated 20th November, 1884, the Rev. J. B. Dales, of Philadelphia, thus writes: "It is our opinion

(that of the brethren of the Ministerial Association) that the stand which a few—far too few—churches have taken against making any repeal or change and of disciplining any parties who will violate the long-established rule has been most salutary in its effects, not only in our own churches but in the communities where our churches are. In our own denomination (the United Presbyterian of North America) not a case of infracting the law has occurred, I think, since the overture was answered in 1870, and only two or three, I think, in the history of our churches for the past nearly 150 years.”

32. All the decisions and actions of the Supreme Courts of the Presbyterian Churches in the Dominion of Canada have hitherto been against modifying their standards or relaxing their discipline in regard to marriage with a deceased wife's sister, aunt or niece ; and, so far as known to the writer, no minister of any of the Presbyterian Churches of Canada has ever been guilty of marrying his deceased wife's sister, aunt or niece.

33. In the preface to a collection of facts, opinions, etc., published in 1834 by the so-called Marriage Reform Association, it is stated, with reference to the article in the Westminster Confession, forbidding a man's marrying any of his wife's relations nearer in blood than he may of his own, that “the Presbyterians of America have expunged it from their Confession.” The facts just stated show how little reliance can be placed on the statements of the Libertarians.

34. In 1868, the Rev. John Laing (now Dr. Laing) published a pamphlet in which he contended that there are no scriptural grounds for prohibiting marriage with a deceased wife's sister, but at the same time maintained that such a marriage was inexpedient and wrong, as opposed to the general sentiment of Christian society, and injurious to the peace of families. “While we are convinced (he says) that the law of God does not prohibit the marriage in question, we are

far from thinking that it is a proper one." "Such marriages are undoubtedly *opposed to the general sentiment of Christian society*. It matters not to what that sentiment may be owing; it is the *fact* that has weight. It is most inexpedient to do violence to the *general sentiment* of any community on a moral question, and, therefore, such marriages should be avoided." "These marriages seem calculated to have an *injurious effect on the harmony and peace of families*, and on the confidence which should subsist between their various members." "We think that when men and women are constantly *meeting on terms of the greatest intimacy it should be perfectly understood that marriage between them is out of the question*. In this light, we think, these marriages inexpedient and thus wrong."

35. The Synod of the Presbyterian Church of Canada, at its meeting in 1856, "took up a memorial from the Presbytery of Cobourg, with reference to the subject of marriages between brothers and sisters-in-law. The following deliverance was adopted by the Synod, viz. : The Synod *having no doubtful opinion*, as to the conformity with sacred Scripture of the principles laid down in our Church Standards, on the law of marriage, and especially touching the degrees of affinity within which marriage is forbidden by the divine law, enjoin on Presbyteries to carry out these recognized principles, as a rule of guidance in dealing with practical questions of church fellowship in this particular."

36. In the Synod of the Canada Presbyterian Church, in 1867, Mr. John Cunningham appealed from a decision of the Presbytery of London in the matter of his suspension from the membership of the Church for marrying his deceased wife's sister. "It was moved by Mr. McLaughlin, elder, seconded by Mr. J. Ross—That the Synod dismiss the appeal and affirm the decision of the Presbytery." A motion to postpone a decision till a future sederunt was lost, and after long reasoning the motion of Mr. McLaughlin was

carried by a *majority of 138 to 5*. At the same meeting of Synod an overture was presented from the Session of Knox Church, Woodstock, on the subject of marriage with a deceased wife's sister, and a motion was made by Mr. W. T. McMullen, seconded by Mr. J. Lang—"That it be remitted to Presbyteries and Sessions to consider the subject of this overture, and to report to next Synod as to whether the clause in the Confession of Faith which forbids, by implication, marriage with the sister of a deceased wife, shall be amended or removed from the Confession of Faith." It was moved in amendment by Mr. Andrew Wilson, seconded by Dr. Burns—"That the overture concerning marriage with a deceased wife's sister be not sent down to Presbyteries, and that it is unnecessary and inexpedient at the present time to agitate further this important subject." The further consideration of the overture was postponed until next meeting of Synod by a vote of seventy-nine to four.

37. At the meeting of 1868 it was decided, on the ruling of the Moderator, that the overture from the Session of Knox Church, Woodstock, could not be further entertained on the ground that it was incompetent for an inferior court authoritatively to impugn the doctrines of the Church, as was done by the terms of the overture. But a similar overture from several members of Synod was considered. A motion was made by Mr. McMullen, seconded by Dr. Edmondson, to send down the subject to Presbyteries and to instruct them to report whether in their judgment the law of the Church on the subject of marriage with a deceased wife's sister should not be so altered as that the Church Courts might be relieved from the responsibility of casting out of church fellowship, on grounds much disputed, those who are so married. It was moved in amendment by Dr. Willis, and seconded by Mr. W. Gregg, to appoint a committee to give its consideration to the subject with a view of elucidating the Scriptural basis of said law and showing that

our rules of discipline do not rest on slight or arbitrary grounds. Another amendment, moved by Mr. David Inglis, seconded by Mr. Andrew Wilson, was carried by a vote of 52 to 37—"That the prayer of the petition be not granted, and that this Synod affirm their continued adherence to the declaration of the Westminster Confession on the subject to which the overture refers."

38. In 1869, the consideration of an overture on marriage with a deceased wife's sister, transmitted by the Presbytery of Cobourg, and a petition from Mr. J. Cunningham on the same subject was deferred till next Synod.

39. In 1870 the Assembly of the Canada Presbyterian Church took up the consideration of the overture of the Presbytery of Cobourg, left over from last Synod. Mr. Laing proposed the following motion, seconded by Mr. Bartlett, elder:—That the overture be received, and that a committee be appointed to consider this subject in all its bearings. First—On the dealings of this Church, in cutting off from its communion parties married in the specified relation. Secondly—On the restoration of such parties to the privileges of the Church, if this can be done consistently with Scripture. Thirdly—On the civil law of the several provinces and countries in which this Church is placed; and further—to prepare such a vindication of the doctrine and practice of the Church as may aid in removing doubts and afford directions to Sessions in their dealing with parties, so that the action of the inferior courts may be uniform and consistent, and to report to next Assembly.

"It was moved in amendment by Dr. Topp, seconded by Mr. Donald Walters, Elder—That the overture be dismissed, inasmuch as the Assembly does not see any reason for such inquiry as is proposed on the subject. It was moved in further amendment by Professor Caven, seconded by Mr. Gregg, that having regard to the importance of the subject brought before the General Assembly, one on which

the Confession of Faith gives no uncertain sound, declaring on Scripture grounds there referred to, that marriages within certain degrees of affinity, including the relationship of a man to the sister of his deceased wife, are forbidden by the divine law, and can never be made lawful by any law of man, or consent of parties, the Assembly sees no sufficient ground for modifying the ecclesiastical rule of its communion in this particular, which is also in harmony with the civil law of Great Britain, but willing to treat with respect the difficulties of some, among whom questions have arisen as to the relevancy or sufficiency of the Scripture degree of affinity, brought under notice, is held to rest, agree to appoint a committee to give its consideration to the subject, with the view of elucidating the Scriptural basis of said law, and showing, as far as may be to parties aggrieved by the rules of discipline, that these do not rest on slight or arbitrary grounds, and to report to next Assembly.

It was moved in further amendment by Mr. J. K. Smith, seconded by Mr. Tolmie—That the Assembly appoint a committee (1) to draw up a statement of the Scriptural grounds on which the present law of the Church is founded. (2) To consider the matter of the discipline with which members of the Church should be visited who have entered upon this marriage relation, and what measures should be employed with a view to their restoration when under discipline." The amendment of Professor Caven was first carried, over that of Mr. J. K. Smith. On a second vote the amendment of Professor Caven was carried by a large majority over that of Dr. Topp, and on a final vote between the amendment of Professor Caven and the original motion, the amendment of Professor Caven was again carried. Mr. Laing craved that the roll of the Assembly should be called and the votes marked. The roll was then called and marked, when ninety-one (91) voted for the amendment of Professor Caven, and fifty-six (56) for the motion of Mr. Laing. The yeas and

nays were then called on the resolution finally adopted, when ninety-four (94) voted yea, and five (5) nay." In pursuance of the resolution adopted the following committee was appointed: Mr. William Gregg, Convener; Dr. Topp, Messrs. D. Inglis, W. MacLaren, J. Ross, and Professor Caven.

40. "In 1871, the Assembly called for the report of the committee to whom it was remitted last year, to elucidate the Scriptural basis of the law of the Church on the subject of marriage with a deceased wife's sister, and to report to this Assembly. The report was handed in by Mr. W. Gregg, the Convener of the committee. The Assembly agreed to hold the report as read, and to order that it be printed as a separate sheet, and that it be taken up at the adjourned meeting of the Assembly."

41. At an adjourned meeting in 1871 the Assembly proceeded to consider the report, when the following resolution, moved by Professor Caven, seconded by Mr. T. McTavish, was carried by a large majority: "Receive the report; re-appoint the committee, and instruct them to revise the report with care, and bring it up again at the next General Assembly." The members of the committee as re-appointed by this motion were Mr. William Gregg, Convener, Dr. Topp, Professor Inglis, Mr. W. MacLaren, Mr. J. Ross, and Professor Caven.

42. In 1872, "The report of the committee appointed by last General Assembly to revise the report then submitted on the subject of marriage with a deceased wife's sister, and submit it to the present meeting, was read by Mr. W. Gregg, the Convener. On motion of Mr. Cochrane, the report was received and the thanks of the Assembly tendered to the committee, and especially to the Convener, for their diligence. It was further moved by Mr. Andrew Wilson, seconded by Mr. Burton, and unanimously carried, that the report as now submitted be printed in tract form, and circulated as an excellent exposition of the grounds on which the standards of the Church are based on this subject."

43. In the Assembly of 1880, "There was taken up an overture from the Presbytery of Toronto relating to the proposal in the last session of the Parliament of Canada to legalize marriage with the sister of a deceased wife, and with a deceased brother's wife, and praying the Assembly to take the whole subject into consideration and adopt such measures as it deems best to avert such legislation as that recently proposed. Professor Gregg now moved, seconded by Principal MacVicar, the resolution of which notice was given near the close of last sederunt, in terms following: Receive the overture respecting marriage with a deceased wife's sister, and appoint a committee to watch legislation on this subject, and to take such steps, by petition or otherwise, as they may deem advisable, with a view to avert such legislation as that recently proposed in the Parliament of Canada. It was moved in amendment by Principal Grant, seconded by Mr. McL. Sinclair, that the overture be laid on the table. Votes being taken, the motion of Professor Gregg was carried and the Assembly decided in terms thereof. The committee was appointed as follows: The Moderator, Dr. Reid, Principal Caven, D. M. Gordon, Dr. Moore, Dr. MacVicar, Robert Campbell, Hon. Mr. Vidal, Mr. Geo. Hay, Hon. Geo. Bryson, Mr. John Charlton, M.P., Hon. David Christie—Dr. Gregg, Convener."

44. In 1881, "Dr. Gregg, from the committee appointed last year to watch legislation in the Dominion Parliament on marriage with a deceased wife's sister, or the wife of a deceased brother, and to take steps to avert such legislation, presented and read a report setting forth that they had taken measures to petition Parliament in case the legislation formerly proposed should again be attempted; that happily the anticipated attempt had not been made during the last meeting of Parliament, and that therefore, it only remained for the committee to cherish feelings of thankfulness that no further steps needed to be taken by them to avert the threatened evil. The report was received."

45. In 1882, "There was taken up and read an overture from Dr. McKnight and others, on the subject of marriage with a deceased wife's sister, in which reference was made to the fact that during last session of Parliament an Act was passed legalizing marriage with a deceased wife's sister, and the consequent conflict between the law of the Church and the law of the land ; and praying the Assembly to take this matter into consideration and appoint a committee to investigate the Scriptural authority on which the marriages referred to are condemned, and report their judgment, with reasons for it, to next Assembly. The Assembly agreed to appoint a committee as follows : Principal Caven, Professor Gregg (Convener), Professor Mowat, Professor Scrimger, Professor Weir, Professor Currie, Professor Coussirat, Principal MacVicar, Principal McKnight, Principal Grant, Mr. J. Laing, Mr. D. B. Blair, and Mr. E. Ross."

46. In 1883, the Assembly called for the report of the committee appointed last year to investigate the Scriptural authority on which marriage with a deceased wife's sister is condemned, and report their judgment accordingly. Dr. Gregg, the Convener of the committee, reported in substance that the views of the members were so divergent that no definite conclusion had been arrived at, but that they recommended that a committee be appointed to inquire further into the matter, and to report especially what course should be taken in such cases where such marriages have been contracted. The Assembly, on motion of Dr. Caven, seconded by Dr. Laing, agreed to the following resolution : That the report be received, and its recommendation adopted, appointing a committee in terms of the deliverance of last General Assembly ; and further, instruct the committee to recommend what action should be taken in reference to marriages within the forbidden degrees, to report in printed form to next Assembly. The committee was appointed as follows : Dr. Laing (Convener), Dr. Gregg, Dr. MacVicar,

Dr. McLaren, Dr. McKnight, Dr. Proudfoot, Mr. D. B. Blair, Dr. Caven, and Professor Mowat.

47. In 1884, the Assembly took up a dissent and complaint of Dr. Gregg and others against a decision of the Synod of Toronto and Kingston, in sustaining action of the Presbytery of Kingston, in sisting proceedings in the matter of a marriage performed by one of the ministers of said Presbytery of a member of the Church with the sister of his deceased wife, in contravention of the law of the Church. Parties having been heard, "It was moved by Dr. Proudfoot, seconded by Mr. T. G. Forbes, that the General Assembly dismiss the protest and appeal, sustain the decision of the Synod of Toronto and Kingston, and the finding of the Presbytery of Kingston. It was moved in amendment by Mr. Robert Campbell, of Montreal, seconded by Mr. H. H. McPherson, that the appeal be sustained, and that the case be remitted to the Presbytery of Kingston to be dealt with according to the laws of the Church. The amendment was carried by a large majority."

48. In the Assembly of 1884, the report of the committee appointed last year on the Marriage Question was presented by Dr. Laing. The report contained several recommendations for the acceptance of the Assembly. The following motion, proposed by Mr. Thomas Sedgwick, seconded by Mr. L. G. MacNeil, was adopted: "That the Assembly, without committing itself to the conclusions of the report, send it down to Presbyteries for their consideration, to report to next Assembly." It was then moved by Dr. Laing and duly seconded: "That the recommendation of the report to inform the Presbyterian Churches in England, Scotland, and Ireland of what is being done by this Church in this matter be adopted. A vote being taken, the Assembly decided that this recommendation be not adopted."

49. At a meeting of the Synod of the Presbyterian Church of the Lower Provinces in 1872, papers were read on a reference from the Halifax Presbytery on the question of marriage

with a deceased wife's sister, as brought up by a complaint against Windsor Session for admitting to membership a woman who was united in marriage to the husband of her deceased half-sister. The Synod declined, on motion of Dr. McCulloch, seconded by Rev. D. B. Blair, to sustain the reference as irrelevant, and remitted to the Presbytery to see that the laws of the Church were duly sustained. At the same meeting the Synod entered upon the discussion of the general question. Several motions were presented, but the Synod's decision was postponed till its meeting in the following year.

50. In 1873, the Synod of the Lower Provinces resumed consideration of the Marriage Affinity Question. It was moved by Rev. Dr. McLeod, and seconded by Rev. E. Ross: "The Synod having carefully considered the question of marriage in all its bearings, resolve to abide by the doctrine of the Confession of Faith, as being in perfect accordance with the Word of God, and instruct all inferior courts to deal with all parties living within the prohibited degree according to the laws of the Church." Rev. Professor McKnight moved, seconded by Rev. J. Bennet, the resolution submitted by Rev. W. Bennet at last meeting of Synod, as follows: "That this Synod, while discouraging marriage with a deceased wife's sister, yet feeling that there is some reason to doubt whether Scripture pronounces such marriage illegal, advises Presbyteries and Sessions that they are not required to enforce exclusion from membership of the Church of such persons as may have entered into this relationship."

The Rev. J. K. Smith moved, seconded by Mr. Forrest, the following resolution:—"This Synod, while believing that the teaching of our standards on the subject of marriage with a deceased wife's sister is in harmony with the doctrines of Scripture, and further that a departure from existing practice according to our law, would be not an enlargement, but a curtailment of the proper freedom of the family circle, yet, inasmuch as there is a well-known diversity of view among

eminent and excellent ministers and scholars of the Presbyterian Church on this point, and especially as this cannot be deemed a matter of such importance as seriously to affect the doctrine or life of the Church, resolve that the Sessions of the Church be allowed a discretionary power to deal with existing cases of such marriages, or any that may emerge, in such way as may in their judgment best subserve the interests of truth and righteousness." The Rev. J. B. Logan moved, seconded by Rev. J. Cameron, the following resolution: "Resolved to adhere to the standards of the Church, and enjoin Presbyteries to deal with existing cases as may be deemed best for the interests of truth and righteousness." Rev. Dr. McCulloch, by request of the Moderator, sought divine direction by prayer, after which the vote was taken with the following result: for Mr. Logan's motion in preference to Mr. Smith's, 75 to 30; for Mr. Logan's motion in preference to Professor McKnight's, 87 to 22; for Dr. McLeod's in preference to Mr. Logan's, 92 to 41. Dr. McLeod's motion was therefore adopted.

To the foregoing collection of facts, opinions, and decisions of Church Courts, which it is hoped will sufficiently show that marriage with a deceased wife's sister, aunt, or niece is discountenanced by the general sentiment of the Christian Church in all ages, it seems desirable to append a brief statement of some leading points in the argument on the Marriage Affinity Question:

1. The law of incest in Lev. xviii. is of permanent obligation. Proofs of this will be found in the Report of the Assembly's Committee, in the validity of which all the members, present at its deliberation, coincided.
2. Lev. xviii. 18, whether the translation in the text or margin of the authorized version, or that of the revised version be adopted, does not settle the question of marriage with a deceased wife's sister. It may not *prohibit* such a marriage, but it *does not sanction* it. It leaves the question open to be decided by other proofs.

3. Lev. xviii. 18 leaves entirely untouched the question of marriage with a deceased wife's aunt or niece. This question is not embarrassed by different opinions regarding the translation of verse 18.

4. The prohibitions in Lev. xviii. are not exhaustive. For example, while a man is forbidden to marry his own mother, his own aunt, and his own granddaughter, there is no express prohibition against his marrying his own daughter, his own niece, or his own grandmother. The daughter forbidden to a man in verse 17 is not his own daughter, but the daughter of a woman by another man. This is evident from a comparison of verses 10 and 17, and is the general opinion of all commentators and writers on the subject. This is also admitted in the Committee of Assembly's Report at which it is stated that "in verses 7-13, except ver. 8, the marriages mentioned and condemned are those of a man to *blood relations of his own*"; and in ver. 17, marriages to *blood relations of the wife* in the direct line of ascent and descent. This clearly implies that the daughter in ver. 17 is not a blood relation of his own, and therefore not his own daughter, but a daughter by some other man.

5. The following are the principles on which the prohibitions in Leviticus are properly extended:—(1) All near of kin are prohibited by ver. 6; (2) what is law for the man is law for the woman in similar relations; (3) what is forbidden in any particular degree is forbidden in an equally distant degree; (4) what is forbidden in a more distant is forbidden in a nearer degree.

6. By the application of one or more of these principles the following results are obtained in regard to cases not expressly forbidden:

(1) A man may not marry his mother, therefore (1, 2, 3), a woman may not marry her father; in other words, a man may not marry his daughter.

(2) A man may not marry his aunt by blood, therefore (1, 2, 3), a woman may not marry her uncle by blood; in other words, a man may not marry his own niece.

(3) A man may not marry his granddaughter, therefore, (1, 2, 3), a woman may not marry her grandson ; in other words, a man may not marry his grandmother.

(4) A man may not marry his father's brother's wife, therefore (1, 2, 3), a woman may not marry her mother's sister's husband ; in other words, a man may not marry his wife's niece.

(5) A man may not marry his father's brother's wife, therefore (1, 3), he may not marry his wife's aunt who is an equally distant relative.

(6) A man may not marry his brother's wife, therefore (1, 2; 3, 4), a woman may not marry her sister's husband ; in other words, a man may not marry his wife's sister.

7. As the term "wife" includes "widow," it follows as plainly from the application of the principles stated, that a man may not marry his deceased wife's sister, aunt, or niece, as that he may not marry his own daughter, niece or grandmother. None of these relations are expressly forbidden, but all are equally forbidden by good and necessary inference.

I shall only further add that having for more than thirty years given a large measure of careful consideration to the subject, I feel every year more thoroughly convinced that the article in the Confession : "A man may not marry any of his wife's kindred nearer by blood than he may of his own," is *sufficiently* sustained by the authority of Scripture ; and therefore most earnestly implore my fathers and brethren not to expunge or practically set aside this article ; and whatever the Church Courts may do, I would most earnestly warn all members of the Church and others from rashly contracting such marriages as those of a man with his deceased wife's sister, aunt, or niece, which fuller consideration may convince them are injurious to the peace and comfort of families, opposed to the general Christian sentiment, and violations of the law of God.