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A LETTER

TO

THE RIGHT HONOURABLE

SIR RICHARD BETHELL, K_{NT.}, M.P.

(HER MAJESTY'S ATTORNEY-GENERAL.)

CONTAINING

A DEFENCE OF THE PROPOSITION

OF A

REFORM IN THE LAW CONCERNING MARRIAGE:

IN ANSWER TO -

A NEW AND RECENT ACCUSATION

BROUGHT AGAINST IT BY

THE RIGHT REV.

THE LORD BISHOP OF OXFORD.

BY

PETER BLACKBURN, M.A., CANTAB:

AUTHOR OF "AN INVESTIGATION OF THE RIGHT INTERPRETATION OF THE MOSAIC
LAW RESPECTING MARRIAGES OF NEAR KIN," AND OTHER TREATISES.

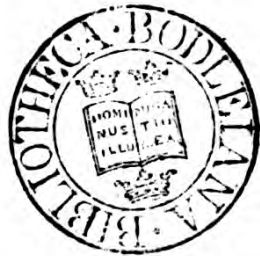
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A LETTER,

TO

THE RIGHT HONOURABLE

SIR RICHARD BETHELL, K_{NT.}, M.P.

(Her Majesty's Attorney-General.)

SIR,

Although I am personally unknown to you, I have thought that you would kindly deem it a very allowable proceeding, that I should wish to present to *your* notice more especially, in this public manner, and to the notice of the community in general, under the advantage of such an address, the matter contained in the following pages. The circumstance of your having declared yourself, by your vote in Parliament, favourable to the proposition that there should be some reform of the law concerning marriage, added to the consideration of the nature of the particular office you have the honour to fill, have caused me to feel, that you were the most proper person to whom a vindication of that proposition from a new and repulsive charge, publicly and deliberately brought against it, by one of the prelates of the Church, should be addressed.

It would seem that the occasion for making this accusation has been, that in some recent publications relating to this question, certain arguments of a new kind have been put forward, which are considered to furnish a foundation for the charge as against them; and I presume, it is because these are known to have met with acknowledgment on the part of many who have read them, that it is now deemed expedient and right to cast on the proposition itself, and, of course, on all who may advocate it on the ground of those arguments, the same impeachment as is alleged to be due to these. The extract given below, from the speech delivered by the Right Reverend the Lord Bishop of Oxford, at the public meeting of the Marriage Law Defence Association, on

the 1st of February last, and reported in the *Times* of Thursday, February 2nd, will be seen to confirm these statements. His lordship does not indeed there make use of the term *writers*, but it is nevertheless evident, beyond the possibility of mistake, that under the term "advocates of the change," they were the persons principally, if not solely, alluded to. I deem it superfluous to point out what evidence of this is given, and consider it necessarily to be inferred from the tenor of the whole passage. A vindication of the proposition, therefore, from this newly-devised reproach, to which the production of these arguments has given rise, must be thought called for from among the patrons and supporters of them; and it will be properly conducted by entering into an examination of the charge in connection with a review of the argument which is alleged for the foundation of it.

This is what is now proposed to be done here with reference to the course of argument pursued in *one* of these recent publications, which no one can doubt, when he compares the citations which will here be made from it, with the species of the charge preferred by the right reverend prelate, was in part at least the subject of his animadversions, when he delivered himself in the subjoined manner.* It is not supposed, indeed, that every expression made use of in this speech was chosen with reference to this particular argument; since it is avowed that the argument of divers writers was meant to be simultaneously reflected on. But whilst it is therefore acknowledged, that both possibly and probably the scope of the remark in divers places looked diversely to the arguments alluded to; yet, as it is impossible in such a mingling and ambiguity to make a discrimination of what had an intended reference to any one of these in particular, and what had not; this will not be attempted: but, as would seem fair, all the expressions will be considered as intended to have a general reference to the argument about to be reviewed, though some perhaps were more directly so intended, than other some. The extract is as follows:—

"The proposed change of the law was putting woman
 "back to the old Jewish bondage. It was a grave charge
 "to bring; but he could establish it by a few words.
 "With the most able, the most learned, and the most

* The publication here spoken of is one written by the author of this Letter, and intitled "An Investigation of the Right Interpretation of the Mosaic Law respecting Marriages of Near Kin." London: W. H. Dalton, Cockspur Street. 1859.

“religious advocates of the change, the newest argument
 “advanced, and which stood in monstrous prominence, was
 “this:—You are not to deal with the two sexes as being
 “equal: you must remember that you are to rule for the
 “man one way, and for the woman another. That whole
 “argument was a detestable piece of Judaism. What! stand
 “up in a Christian community, among men whom Christ
 “had made free—stand up among those who had been
 “taught the perfect equality of man and woman in the rege-
 “nerating Church of Christ, and propose that they were to
 “go back to the half heathen and half Jewish fables, and
 “teach that woman was made for man’s use and man’s
 “pleasure, and not as the sharer of the revelation and re-
 “demption of Christ? He could scarcely conceive any set of
 “arguments more fatal to truth or to real religion than those
 “that had been introduced, not by accident, but of necessity,
 “in order to support this miserable question. He agreed
 “that this agitation was fraught with the highest danger to
 “our religion and to our morals also, because nothing was
 “more certain to sap the morals of any country than to
 “lower down the requirements of law to the invitations of
 “appetite.” (Cheers.)

I. Now, sir, in making answer to this, I shall in the first
 place set before you and the public some account of the nature
 and object of the argument pursued in the publication before
 referred to, citing the writer’s own words on the more
 material points, and suppressing nothing that is of import-
 ance as indicative of its spirit and design. You and the
 public will then be in a condition to judge for yourselves
 whether this must not be one branch at least of the whole
 argument alluded to by the right reverend prelate; and also,
 how far the idea of its scope, which the charge is calculated
 to convey, when viewed in the light of the other expressions
 used in the context, and which must be received as having a
 legitimate reference to it, is a right or a delusive representa-
 tion of it. After giving this epitome I shall then proceed to
 examine the nature of this charge itself, and to consider what
 its value is as furnishing a counter-argument against the
 proposition which the former goes to support.

1. The writer at the outset, after noticing that the debate
 on this question, in the House of Commons, on the 16th of
 February in last year, had brought it into a very embar-
 rassing complication, and that he thought he could supply
 the key to its solution, intimates his belief, that the idea
 which had been hitherto generally recognised on both sides

as “an axiom of certain truth” with reference to the divine intention in the law of marriage given by Moses, and contained in Lev. xviii., and which idea in a general form he has thus expressed, “that the man and woman should be “subjected to precisely the same restraints, and each left to “precisely the same liberty of choice,” was open to question ; and he then proceeds to demonstrate, that the application of the rule *pari ratione*, in the latitude in which it had been assumed and used for the due interpretation of this law, or so that the result might be in accordance with this preconceived idea, was “a theoretical error,” and that consequently the result of its application was justly to be considered as in some instances fallacious.

Having established this point, as he believes, by an incontestable proof, he states what the consequence is as it regards the discussion of the particular question then at issue. This he explains, by noticing how this proof would be found to affect the question of the lawfulness of marriage in another whole class of relationships, hitherto believed on both sides to be uniformly prohibited. He states, that as to one division of them it exempted these altogether from prohibition ; but that as to the other, it left the prohibition on them for the main part unchanged ; the relationships referred to being those of niece by affinity and uncle by affinity on the one hand, and aunt by affinity and nephew by affinity on the other : and he connects with this statement the following sentiment, that “in this disposition of things giving to each “sex, though in an inverse order, equal liberty and equal “restraint, there was a fitness which was recognised by the “common feelings of mankind,”—a sentiment, which was no doubt introduced with the view of responding to and foreclosing an anticipated objection, which was thought not unlikely to be taken by the opponents on an abstract view of the matter, and such as in fact has now been brought forward by the right reverend prelate, in the charge he has preferred against this argument. And when to the foregoing has been added the following quotation also, that “the prohibition of “a brother’s wife cannot be made the ground, except by an “assumption which has been proved to be false, of any “inference as to the case of a wife’s sister,” (which of course is tantamount to saying, that although the woman cannot be married to two brothers in succession, this is no impediment to the man’s marrying two sisters), the public have then before them the particular statements in this publication, which it is thought inevitably serve to identify this writer’s

argument with the one intended to be characterised and alluded to by the right reverend prelate. And I venture to aver, that there are no other statements in the whole course of the argument more material than these, on which his lordship can have advanced the allegation he has made, that its legitimate force and scope is to propound to the legislature of this realm, that "they are not to deal with the two sexes "as being equal; but must remember that they are to rule "for the man one way, and for the woman another."

2. The next matter the writer proceeds to is to explain the legitimate form, or *rationale*, as he conceives, of the principle of analogy, as the same is applicable to the interpretation of the divine law of marriage; and he points out whence this idea of its truth was to be derived, even from the very structure of the law itself; and he then produces a table of prohibited cases, exhibiting the whole result of the application of this principle, in the form he had before defined, to the specified prohibitions in Lev. xviii. By this he makes it appear, that the enumeration given in the authorized Canonical Table of the degrees of kindred and affinity interdicted in marriage has very considerably enlarged the boundaries of restraint intended to be prescribed in the divine law; instancing in particular the prohibition of a wife's sister, and of its reciprocal, a sister's husband, as well as the prohibition of the several cases of niece, and niece by affinity, and of the cases reciprocal to them in relation to the woman of uncle, and uncle by affinity. There are other points of difference besides these, which he does not care to notice, partly in the way of excessive prohibition, and partly of defective enumeration (as in the non-specification by the side of sister of the cases of half-brother and half-sister) on the part of the Canonical Table.

Having made this exposition of the state of the case, he then anticipates the possibility of a denial being given to the validity of his conclusion; and wishing apparently to obviate controversy, supposes what would be the line of argument his opponents would probably adopt; and in a condensed manner, which in an appendix is expanded into a copious form, meets this line of argument throughout; and, as he considers, refutes it: upon which he puts forward a claim to have it acknowledged, that notwithstanding the features of his Table, as before explained, the interpretation of the divine law of marriage as established by his argument was entitled to be received as its true explication.

II. Such being the account to be given of this writer's

course of argument, and such the characteristics of its spirit and design, I come next to the examination of the Bishop of Oxford's mode of dealing with it. And first I have to note, that his lordship does not give in any direct way the slightest intimation of intending to assert, that on logical grounds it may be proved to be essentially faulty and inconclusive. But adopting the artifice of making up the want of a logical disproof by bringing against it an imputation of odious sound, he imagines that in the issue of the argument there is a palpable and glaring contradiction to one of the objects comprised in "the revelation and redemption of Christ;" and puts forward this conceit, in the shape of the charge he has made, to serve as the ground of a counter-argument for the discrediting and rejection of the other, as will presently be explained.

1. In animadverting on this charge, it may be remarked of it, firstly, that it is of an equivocal character. For it may mean, and, as I think will be the general opinion, may also have been designed to convey, that an argument which went to establish that there was divine authority to sanction the legislature of this kingdom in enacting the lawfulness of the particular class of marriages alluded to, was in fact an attempt to furnish one sex with a pretence of reason for cherishing the idea of its being divinely privileged beyond the other; which having gained a footing in this particular, would proceed to develop itself in a variety of ways that would cause this sex to feel that they were injured and degraded. What other idea than this can be thought to have suggested the use of such phrases as the following: "the proposed change of the law was putting woman back to the old Jewish bondage;" it was "to propose that they were to go back to the half-heathen and half-Jewish fables, and teach that woman was made for man's use and man's pleasure, and not as the sharer of the revelation and redemption of Christ?" Certainly, when it is remembered that the whole ground for making these vague and invidious assertions was simply, that it had been set forth in this argument, not as a speculative dogma attempted to be forced on the words of Scripture, but as a logically ascertained truth, that by the divine law a man was allowed to marry two sisters in succession, but not so a woman two brothers; and again, that a man might marry his niece, or niece by affinity, but not so a woman her nephew, or nephew by affinity, with the accompanying reflection in reference to the latter of these rules, "that in this disposition of things giving to each sex, though

“in an inverse order, equal liberty and equal restraint, there was a fitness to which the common feelings of mankind bore testimony;” it must be generally felt, I think, that there was adequate cause why the right reverend prelate should remark, concerning the charge he was about to state, that “it was a grave one to bring;” such being the idea, which, under cover of ambiguous terms, he was intending to insinuate in connection with it.

2. Deeming it sufficient to have brought under notice that such is the legitimate interpretation of this charge, when viewed in the light reflected upon it from other expressions found in the context, and which have a clear relation to it, I shall decline offering any answer to it *in this sense*, but pass on to deal with it under another construction, which it might possibly be alleged was the one that ought more properly to be given to it, regard being had simply to the terms in which it is stated; and this is, that under the general form of the proposition an allusion to the particular matter in question was simply intended; and consequently, that it was merely meant to allege, that the scope and issue of this argument, by constructively teaching that this law of marriage was so constituted as that it appeared that the Creator did not intend to deal with the two sexes in respect of their liberty of choice in this matter as being equal, went directly to say to the legislature,—You are warranted and required by the divine authority to deal with the two sexes as not being equal *in this particular respect*; and should remember, that you are to rule for the man one way, and for the woman another.

Now, supposing this to be the simply intended meaning of the charge, the way in which the right reverend prelate must mean that it should have effect as a counter-argument, as is evinced by the nature of the expressions used in the context in relation to it, would seem to be this: that since “we were taught the perfect equality of man and woman in the regenerating Church of Christ,” and this law of marriage was intended not for God’s ancient people only, but likewise as the rule to be followed by the people of Christ when his universal kingdom should be introduced into the world; and must *therefore* necessarily be founded on the principle of the same perfect equality: the issue of this writer’s argument presented such a contradiction to this conclusion, that without more ado it ought to be peremptorily dismissed from all consideration and notice, as containing in its very object its own refutation, and as being worthy to be regarded as “a detestable piece of Judaism,” fraught with

the intention of "bringing woman back to the old Jewish "bondage."

3. Before making answer to this argument, I would ask, what must be thought the right reverend prelate's meaning in inveighing in such terms as these against the argument he opposes? Was it forsooth his meaning, that this argument was "a detestable piece of Judaism, &c.," because in his judgment it was analogous to those perversions of the Scripture brought to light and reprov'd by Christ, which the Scribes and Pharisees and doctors of the law among the Jews maintained on the authority of the tradition of their fathers; and of which the effect was "to teach for doctrines the commandments of men," and to subject the people to a bondage to customs and restraints both beyond and against the real intention of the divine testimony? I presume this, or some notion nearly akin to this, to be the meaning; because it could not be supposed, that the right reverend prelate might mean, that he allowed the undeniableness of the interpretation established by this argument, but nevertheless regarded it as "a detestable piece of Judaism," because it favoured a return to a state of things respecting liberty of choice in marriage, which, although it was ordained for the people of Israel, and was a legitimate part of "the old Jewish bondage," was justly to be considered done away with "in the regenerating Church of Christ," that it might give place to such an improved modification of this law as was now established by ecclesiastical authority, and had been introduced at some very early period of the Christian era. Such an explanation is precluded; because not only does it not square with the use of the expression "to go back to the half-heathen and half-Jewish *fables*," and what follows in the same clause, but neither would it be germane to the position, which the right reverend prelate has all along maintained as to the law of marriage in Lev. xviii; that being part of God's moral law it was not to be considered as of special application to the people of Israel, and of temporary institution, but as intended to be of permanent obligation "under the regeneration and redemption of Christ;" and, of course, in the full latitude of its just interpretation. Neither has it at any time been pretended, that a divine revelation had given authority to a modification of this law for the use of the Christian Church, or that the interpretation now received was such: but it has always been presumed and contended, as well in ancient times, of which St. Basil is a witness, as at present, that the collections from it recognised by the Canon law was only the just

interpretation of it. These things being so, it would seem *necessary* to consider the right reverend prelate's invective as intended to have the meaning presumed above for it. Perhaps, however, he will at last see reason to think, that the attempt he is so pertinaciously making to uphold an interpretation received by tradition from his fathers, and the effect of which is, if this argument which he denounces be sound, to deprive both the man and the woman in the Christian Church of a very considerable measure of the liberty which the law of God has allowed them in this matter, (whilst the effect of this argument is, without taking from either of them any liberty of choice they now have, to enlarge it to each in certain directions considerably,) rather of the two merits the application of the judgment he has pronounced.

I come then now to make an answer to the argument, which was said to be implied in the right reverend prelate's whole course of remark. And I have to observe respecting it; that it is *assumed* in the first proposition, that the equality there spoken of cannot consist with the possibility of such a thing, as a difference of any kind between the man and the woman, in respect of liberty of choice in this matter. Such an assumption must *necessarily* have been made: else no argument of the kind intended could lie. But, if this equality be really incompatible with the possibility of such a thing, because it is a *perfect equality*; would it not follow from the same premises, that it was also incompatible with any other kind of difference between them? And when the phrase was used for the purpose of excluding the one; would it not be naturally and legitimately understood to exclude *all* differences whatsoever likewise? Yet, it would not be avowed by the right reverend prelate, that there were *no* differences in the relative natural and social positions of the man and the woman which Christianity recognises, and inculcates as necessary to be observed. How then should he claim, that this difference *in particular* should be understood to be inconsistent with the equal mutual relation of the man and the woman to the Lord Jesus Christ as members of his body, and having as such equally in common certain spiritual rights arising out of this relationship, and being equally the objects of the beneficent doctrines, the spiritual blessings, and heavenly promises of his gospel; which I presume is a correct description of the equality asserted? Would it be pretended, in the absence of any proof from Scripture of such a doctrine, that *one of these spiritual rights*

is, that the man and the woman in the regenerating Church of Christ should have precisely the same liberty, and precisely the same restraint in the matter of choice and power to marry; whether, or not, this was given them by the law in Lev. xviii? But, whence would the right reverend prelate draw the proof of this assertion? Would it be possible to allege the authority of ecclesiastical tradition in proof; and to urge, that the decree of some ancient council as to the marriages which should be deemed lawful among Christians, founded on the recognition of this principle, went to prove that such was their belief; when it is obvious, from the attempt made by St. Basil to reconcile the prohibition of a wife's sister with some sort of interpretation of Lev. xviii. 18, that this principle must have been adopted because it was presumed to be the principle on which that law was founded; and not because of any such speculation as to what the equality of the man and the woman in the regenerating Church of Christ required? I presume therefore that this course would not be taken: and then, perhaps, it will be found that there is no other ground left to be resorted to than this; that because equality in this matter is a part of abstract justice and right, this is warrant for the belief, that the Creator, when he instituted marriage, could not have intended to put any difference between the man and woman in respect of this matter; and, consequently, for concluding, that no interpretation of his law, whereby such a difference was made to appear, can possibly be right.

4. I have pursued the question to this issue, because I feel that the right reverend prelate, by the way in which he has thought fit to deal with this writer's argument, has in truth betaken himself to this ground; and that he has put himself in the predicament of having now to maintain, that his own private judgment on this speculative point, as well as probably on another of the like kind, the moral consequences which he presumes the making of such a difference would involve, is a justification of his holding the position he now occupies, of denouncing any amendment of the statute-law respecting marriage *as being contrary to the law of God*; and this, in the face of a philological argument directed to the proof of the contrary, the conclusiveness of which on its own proper grounds he does not offer directly to deny!*

* In the course of the same speech from which the foregoing extract is taken, the right reverend prelate is reported to have expressed himself also to this effect:—"The danger was from the apathy of the people, *from their not believing that the proposed change was contrary to the law of God.*"

Whether, or not, his lordship will maintain such a position, or see and acknowledge, that, in the counter-argument meant to be implied, as before explained, in the charge he has made, there is a *petitio principii*—an assumption, indeed, of dangerous boldness, which renders it void of all relevancy, will remain to be seen. I would observe, however, for the consideration of all persons who profess to acknowledge the paramount authority of holy scripture, and the obligation of allowing scope and effect to the revelations of the divine will, which are of an universal kind; that if it be a sound principle, as would seem to have been held by the Church from time immemorial, that the law of marriage contained in Lev. xviii. was not constituted with reference to the people of the Jews only, except in the view of being *part of a code of laws* specially imposed on them, but was an instruction in righteousness in this matter intended to be of universal and perpetual application to all to whom the knowledge of it might come, and consequently to the people of Christ under the new covenant (2 Tim. iii. 16); then the right and only way of arriving at the truth on the particular point now adverted to must be to inquire carefully, in accordance with the right principles of interpretation, what this law declares; so making our conviction of what is the revelation of the will of God in this matter, and not an implicit reliance on the truth of the traditional doctrine respecting it, the ground of our belief as to how the divine will in this matter stands under the dispensation of the kingdom of Christ. In making this inquiry it is of course quite possible for any one, however confident he may feel of the truth of his investigation, to fall into error both of statement and reasoning, which may either vitiate the main conclusion at which he arrives, or weaken the force of some of the subordinate arguments he has applied; but should this be thought by any to be the case, as there must be those on the opposite side of the question who can detect and expose the fallacy, if there be any of essential importance; this is what should be done; and then the claim of such an investigation to be received with credit will have been legitimately dealt with and disposed of.

5. And here I would take the opportunity of proposing to the consideration of those persons more especially, who deem it almost of infallible certainty from the prohibition of a brother's wife, that *by analogy* a wife's sister is likewise prohibited, and hence may have been unable to give their assent to this newly-proposed interpretation, some arguments designed to show, that there is a palpable fallacy committed in the adopting of this idea.

It is undoubtedly a very specious principle in the good sense of the term, to assume *generally*, that *whatever* relationships are of the same degree, or of equal nearness to a man, as any of those which are expressly declared to be prohibited to him, they likewise, on the score of this equality, or by analogy founded hereon, are properly to be understood as inclusively prohibited with these, and are rightly to be inferred from them. But it must be acknowledged that this is not a deduced, but a speculative and assumed theory. In its very nature, therefore, it is liable to error. And I think it equally possible to be demonstrated by another line of argument, as it has been by that which has been pursued in the publication before referred to, that it is an error; and that the fallacy of adopting it has been committed by overlooking the fact, that it is inconsistent with the method pursued in the delivery of this law. For it will appear, I think, that if this had been the true *rationale* of the principle on which this law was intended to be constituted and interpreted, one or the other of two consequences would have resulted from it; neither of which, however, is seen to take place; and that, therefore, *per contra*, this assumed principle cannot be the right one.

For, let it be supposed that this was the principle; then it is certain, that after the analogous cases in the first instance or two, had been set down, the principle having been thereby declared, all that was then needed was, that an enumeration should have been made of the other primary cases which were also intended to be prohibited, the analogous cases dependent on these being left in all instances alike to be inferred from them. This is one method that naturally follows from the supposition; but what *is* done has no similitude whatever to it. Again, when the insertion of the analogous cases was carried on beyond the first or second instance, it must then on the supposition have appeared incongruous and apt to mislead, if any single analogous case *intended* to be prohibited conjointly with its specified primary one *were left unspecified*; and hence *all* the analogous cases would have been expressed. This is the course which precision rendered necessary, on the supposition, in the method actually taken; but neither is this the case. There is an incompatibility therefore between the method actually taken and the supposition. This, therefore, is to be deemed an error; and the fallacy in it is in making simple equality of degree an *absolute* cause of prohibition by analogy, instead of giving it the limitation which is clearly prescribed in the law itself.

6. If in answer to the second of these arguments it were urged, that since *mother's* brother's wife is not expressed in conjunction with the case to which it is analogous, whilst, as it is agreed, it is one of *undoubted* prohibition; the non-specification of this case would hence have to be considered, according to what is implied in the argument, as much an occasion of uncertainty and doubt as to the intended application to it of the principle of analogy, as it is meant to say the omission of wife's sister would be properly considered to be in regard of it; but that since this does not hold in the one case, neither ought it to be considered to do so in the other; and that since the argument is therefore shown to proceed on an assumption which the state of the case does not bear out, it makes nothing against the truth of the supposition. To this it is to be replied, that the intention to include *mother's* brother's wife in father's brother's wife was clearly indicated by the expressed prohibition in immediate proximity therewith of *mother's* sister in conjunction with father's sister; *the determining rule* of the analogy *which is here shown* having equal application to it; and that hence the need of its being specified was obviously shown to be superseded: but that no such clue is given to a similar conclusion respecting the non-specification of a wife's sister in conjunction with brother's wife. The allegation, therefore, not being well founded, the answer fails; and what is implied in the former argument, respecting the non-specification of wife's sister, being reasonably to be allowed on the supposition, the conclusion herefrom against the same remains firm.

7. If it were replied again, that the equality of the relationships in the two cases afforded such a clue; this is negatived by the fact, that this consideration did not avail to prevent the specification of the other analogous cases which follow in succession after the principle had been sufficiently declared by the insertion of the first. The insertion of these, therefore, was not rendered unnecessary by their equality in degree with the specified primary cases to which they respectively belong; and, consequently, on the assumption that there is a true equality between these two cases, this ought not to be taken as a certain indication, that because one of them is expressly prohibited, the other must have been intended to be inclusively prohibited with it. It is therefore to be re-affirmed, that the supposition does not embody the true *rationale* of the principle of analogy, by which it was intended to constitute this law, and by which it is to be interpreted; but is faulty in the respect before mentioned.

8. But it might by some one, perhaps, be objected again in stay of this conclusion, (and the idea is certainly not now an original one,) that to permit one of these relationships in marriage, and to forbid the other, would be *in violation of equity*; inasmuch as the man would then be given a privilege over and beyond the woman: and since, in this aspect of the question, it cannot but be thought necessary and certain, that there was an intention that the wife's sister should be understood to be included in the prohibition of brother's wife; the conclusion arrived at by the preceding line of argument, as to the unsoundness of the principle of the supposition now being discussed, in consequence of its requiring on the score of simple equality that the case of wife's sister should be deemed an *intended* case of prohibition, being contradicted hereby ought to be held inadmissible.

In producing this objection, it seems proper to remark, that a stress is supposed to be laid on the peculiarity of the form of these two relationships; and that this is made a distinct ground of consideration, besides the presumed equality between them in respect of nearness, for approving the determination, that on the principle of equity it must be thought necessary and certain, that the two cases should have been intended to be prohibited alike. This is the light in which it has seemed to me there has been a disposition to view the matter, and to place it before others, when, as I remember to have observed, it has at times been pointedly remarked, that the relation of one woman to two brothers was so exactly parallel and proportional to that of one man to two sisters, that the very species of the equality seemed to carry with it a force of conviction, that it was *surely* to be received for truth, that it must have been the intention of the Divine Lawgiver to deal in the same way with both cases. The fact, that the point of equality of relationship has never been disputed in the discussion of this question, (for the topic of dispute, apart from the philological ones, has for the most part been the assertion of the doctrine, that marriage with a brother's wife, or wife's sister, *was to be held incestuous*, necessarily inferring the prohibition of the one as well as the other,) involves the consequence, that the object of such a representation of the case could not be simply to challenge assent to the truth of the equality; but to gain a recognition of the notion, that there was something in the very form of the equality, which contributed to the truth and strength of the reason arising therefrom, why it should be con-

sidered necessary to be received, *on the principle of equity*, that the case of wife's sister was intended to be inclusively prohibited in brother's wife.

9. Supposing then this to be an objection that might possibly be advanced against the conclusion already before specified; its application, it is presumed, would be made after this manner: that the specific form of these analogous relationships tended to convey the impression, that the equality between them was hereby made *more particularly* a reason, why it should be thought absolutely certain, on the principle of equity, that the two cases were intended to be prohibited together.

If it were not true, that in the discussion of this question there has been a disposition evinced, partly on both sides, but more predominantly on the side of the defence, to resort to whatever semblance of argument presented itself to the imagination, (of which the first notable instance is to be seen in the reasoning employed by St. Basil, framed with so much art; and of which there are not wanting some remarkable instances of very recent date, one of which is given below*),

* In the debate in the House of Lords on Friday, July 23, 1858, on the second reading of the Marriage-law Amendment Bill, his Grace the Archbishop of Canterbury having been understood in his speech to ground the necessity of inferring the intended prohibition of a wife's sister from the expressed prohibition of a brother's wife, on the score, that, the relationships being of precisely the same kind and degree, if one of them were *incestuous*, as was to be assumed true of the prohibited case of brother's wife, the other must be so likewise, and consequently must have been intended to have been included in the former:—Lord Wodehouse thereupon contended in answer, that this inference was by no means to be thought valid; because it appeared to him an unwarranted conclusion from the prohibition of brother's wife, that marriage in this relationship was to be accounted *incestuous*: alleging in confirmation, that this marriage was strictly enjoined in certain conditions; and that "it was monstrous to suppose, that the Divine Lawgiver could give a "positive order to do that in special cases; which in general cases would "make a marriage *incestuous*." The force of this reasoning could not but be felt; and, it being assumed that incest is, what in all the debates on the subject hitherto it had been taken to be—a violation of an instinctive moral sense, or natural law, the conclusion from the noble lord's answer could not be gainsaid.

The Bishop of Oxford, who rose to reply, perceiving this, and being at a loss how otherwise to obviate the force of this argument, devised a new idea to meet the emergency; and with apparent confidence in the truth of his invention, gave utterance in the following manner to an astounding paradox:— "Incest, my lords, you must remember, is not a sin against nature, but is a "sin against a positive enactment!" Having delivered this dogma, his lordship proceeded to offer arguments in confirmation of it, drawing his conclusion from what took place by the divine appointment in the origin of the human race; but at the same time closing his eyes to the palpable contradiction to the truth of it which is given in Lev. xviii; of which when reminded by the Earl Granville, and asked to give a solution of the apparent repugnancy of

it would hardly now have been thought worth the while to have thus analysed the meaning of this objection, and to proceed to expose its nullity. But arguments of this ideal and specious character being generally less open to refutation than such as are of a solid nature though founded in error,

his conclusion with the fact there stated, his lordship felt himself at a *nonplus*, and declined making any answer.

Now I presume to remark hereon, that the remembrance of our Lord's aphorism "the Scripture cannot be broken," ought to have restrained the right reverend prelate from propounding as a dogma a conclusion which he thought was surely derivable from this fact of biblical history, but which he could not but know was repugnant to another fact also stated in Scripture. No fond expectation of securing a point in debate should have beguiled him into the adoption of such a hazardous expedient, which was sure to re-act on himself. The interests of truth demanded of his lordship to see, that the fact to which he alluded could not possibly afford ground for the inference he so confidently deduced from it; and that it must admit of an explanation, which would reconcile it with what is so plainly declared to be a fact likewise, namely, that there is such a thing in certain marriages as a sin committed against the light of nature, and that this is the proper idea of incest.

I would here, therefore, briefly state what is the explanation which appears to me possible to be given of this matter. Certain mixtures are accounted sins before God, because they are in violation of an inward law or moral sense, implanted by his Spirit in the moral consciousness of men. But supposing this inward law not yet implanted, then no union could be felt to be against the light of nature; and the sin of incest consequently could not be committed. This, I apprehend, was the case as it regards the first progenitors of our race. The Spirit of God, "in whom we live, and move, and have our being," did not from the very first impress this moral sense on the children of Adam; and so the union of brother and sister could take place without any sense of doing wrong or self-condemnation. Like as our first parents before their transgression had no natural sense of shame, but after that event this was impressed upon them by the Spirit of God; so it is possible, that until the human species had advanced to a certain growth, God did not see fit to implant in them that moral sense as to the unfitness of certain mixtures, which for wise purposes he afterwards, and ever since has instilled, in the formation of their being.

I must now state, that I have been the more induced to take notice of this instance of having recourse to false argumentation, because it was *through the accident* of having such a proposition brought before my mind, as that "incest is not a sin against nature, but only a sin against a positive enactment," that I was led to stand in doubt of the security of the ground on which I was then standing, as a believer in the soundness of the principle of analogy above discussed, and which I have now shown by two distinct lines of argument to be unfounded in truth. For, as I read that startling assertion, the thought immediately flashed across my mind, that such a proposition destroyed the very foundation of this principle. For, if the expressly prohibited marriages were to be deemed incestuous *only because they were prohibited*, how could the prohibition of these be in every instance a reasonable ground of inferring *the certainty* of the prohibition of other cases, merely because they were of equal degree; there being nothing now in this circumstance to make the prohibition necessary. A doubt having been thus infused into my mind respecting the certainty of this principle, I ceased to receive it with implicit confidence; and was led eventually to apply myself to a due examination of its truth: the result of which examination was the production of the argument, which is now being defended from the accusation of the right reverend prelate.

and being on this account the last to be abandoned by their patrons ; there is a need that the refutation of them should be undertaken, equally as of the other sort ; that they who have been disposed to make account of them, whether honestly under the delusive influence of erroneous prepossession, or sophistically for the purpose of maintaining what they will have to be right, may in the one case candidly renounce them, and in the other be deprived of any advantage from them, when their emptiness has been made to appear.

Now, in returning an answer to this objection, (which, indeed, is only an instance *in particular* of the same assumption which has been before noticed, on pages 11—12, in its *general* form), it does not seem at all requisite to enter into the question, whether, or not, the singular notion on which it is founded be a substantial or a purely imaginary one. For, if it be granted, that there may be something in the idea, that the equality of the relationships in this instance is enhanced by the specific form in which it presents itself ; still, unless it can be distinctly made to appear, in what the preponderance from this cause consists, which the equality in these two cases of sister by affinity acquires hereby over the same as seen in the cases of aunt and niece, and of aunt by affinity and niece by affinity ; this matter, whatever it be, must needs be admitted to have but a very trifling ratio to what is supposed to be the *main ground* of the presumed intended prohibition of wife's sister ; namely, its equality with brother's wife *simply* considered. Consequently, since it would seem a very sure collection by the foregoing argument, that there may be cases where equality of degree is not considered by the Lawgiver a reason for prohibition ; it seems reasonable to conclude herefrom, *on the supposition now made that equity is concerned* in making the equality of the relationships in this particular instance a cause of the prohibition of both, that, if this were so, the cogency of the reason would lie in the equality viewed abstractedly ; and that it would be preposterous to suppose, that the determination of the prohibition of the wife's sister as analogous to brother's wife had at all been regulated by a regard to the other matter comparatively so inconsiderable. Whence it will follow again, *per contra*, that it is impossible in this instance to allege *the above idea* as a ground of reason *à posteriori*, why it should be thought requisite to believe, that the equality between these cases must have been considered by the Lawgiver a reason for his intending the prohibition of both ; and why the case of wife's sister, therefore, ought to be

understood to have been included in the prohibition of the brother's wife. The objection, therefore, would appear to be of an unreal and factitious nature: and consequently the certainty of the conclusion before arrived at cannot be at all affected by it.

10. The truth of the matter, on the whole, would appear to be, that although equality of degree is necessarily an element in every case intended to be prohibited by analogy with another that is expressly so, it is not in itself a necessary cause of prohibition. Consequently, an error has been committed in assuming that it was such absolutely and uniformly, and in adopting this notion as the principle of analogy, by the application of which to the prescriptions of this law the full intention of it was to be properly expounded. But it seems just to add, and the cause of truth in general calls for the declaration of it, that to have adopted this as the rule of exposition, and then to give it a partial and arbitrary application, as has been undeniably done in the construction of the authorized Canonical Table, was not so much to commit an error of interpretation, as to impose on Christian people a conventional and human law of marriage, under the pretext of its being considered the true exhibition of the divine.

I close this discusson, therefore, with the remark, that the agreement which is found to exist between the conclusion obtained by the line of argument pursued above, with that derived by the other distinct line pursued in the publication before referred to, substantiates the common result obtained by both; and that hence it would seem impossible in future, without a prostration of reason, that the authority of ecclesiastical tradition should be appealed to, either for accrediting the principle of analogy, as before stated, by which it is acknowledged this Table has been constructed, or for abiding by the results of its application there set down, as being entitled to be thought in the whole of divine and unalterable obligation.

III. It has been supposed through the whole course of the preceding argument, that there is in truth as real an equality of relationship between the cases of wife's sister and brother's wife, as obtains in any of the specified instances where two analogous cases are expressly prohibited together; as for example, father's sister and mother's sister. The conclusion, therefore, that the intended prohibition of wife's sister is not to be inferred as of legitimate consequence, because of brother's wife being expressly prohibited, holds respecting it on *this* supposition. Hence it follows, that the

argument and conclusion apply equally to the relationships of brother's daughter, sister's daughter, wife's brother's daughter, wife's sister's daughter, and some others besides these; which, from their being of equal degree of nearness, respectively, with the prohibited cases of father's sister, and father's brother's wife, have been inferred from these on the principle just discussed, as being cases intended to be inclusively prohibited. These relationships, therefore, in common with wife's sister, are to be considered, by virtue of this same argument, as having been unduly reckoned among those intended to be prohibited. Assuming this to be so, it must then be admitted, that there is an apparent discrepancy in the divine treatment of these cases as compared with others of apparently equal degree. And the question arises, what solution is to be given of this matter?

1. I think the solution will be found to be, that these cases are not, in the divine estimation, analogous to those to which they have been assumed to be so. In order to elucidate this point, some further discussion will be requisite, and of rather a delicate nature. The importance, however, of establishing the point, in order that the present controversy may be brought to a satisfactory settlement, will be deemed a perfect justification of my taking it in hand. And I hope to be able to show, that it is reasonable to believe, that there are considerations specially affecting these cases in the divine judgment of them, which, notwithstanding the apparent equality between them and those with which they are compared in point of nearness in relationship, do properly remove them out of the category of being analogous cases to these. Should this be established, and the objected discrepancy be shown to admit of so perfect an explanation; it will then have been brought out, that the fallacy which has been committed, as before argued, in assuming and adopting the principle discussed above, has had its origin in another oversight besides the one before adverted to; namely, in its not having been noticed, that there were at hand such grounds of truth and reason as are now about to be assigned, which rendered it morally certain, that such a discrepancy would be found to have place in the law of the Creator respecting marriage; and which, therefore, if they had been duly recognized, would probably have prevented the introduction of so *inconsistently drawn* a programme of the boundaries of restraint, as has been set forth in the Canonical Table, and imposed upon Christian people as of divine authority.

... In proceeding now to inquire into this matter, I propose

to confine myself, at first, to the consideration of it in relation to the cases of wife's sister and brother's wife by themselves ; and then afterwards to take up the inquiry with reference to the other cases before mentioned.

2. It seems obvious, at first thought, that the constitution of a law respecting marriage would be regulated by the scheme of it in the mind of the Creator prior to its institution ; *i.e.*, that it would be framed in unison with the ideas and purposes of his own wisdom and good pleasure in originating such a kind of relationship between his rational creatures. It has been revealed to us, that these purposes have relation to the mystery of the Economy of Christ ; and that what was ordained respecting this in the wisdom and foreknowledge of God, should be typically exhibited in the formation of the man and woman, and in *the nature* of this relationship instituted between them. It is probable, therefore, that as to some parts of this scheme, the same thing is true, as obtains with respect to other mysteries of the Deity ; that it is given us to know them but in part only ; and that these are accordingly but dimly set before us. There can be no doubt, however, that as to those parts which constitute the practical objects of the institution, the all-wise and good Creator has provided, that the knowledge of these should be effectually conveyed to us in the written testimonies of inspiration. In some particulars of it this knowledge has been most explicitly given us both in the Old and New Testament. Part of it, however, may not have been so categorically delivered, but been nevertheless sufficiently notified by the discovery of the divine mind made in an indirect way through the nature of some of his positive ordinances prescribed to his people. These being duly observed, and the truths embodied in them rightly perceived, they would supply the want of express instruction on such points ; and, as illustrations of what was intended and obscurely comprised in the record of the institution, they convey instruction to all generations ; although the ordinances themselves, having special reference to God's ancient people, do not concern us.

3. Now, it has been pointed out to good effect, I think, in another recent and learned publication on this question,* and one which there is just reason to believe was also alluded to by the right reverend prelate ; that there are divers ordinances in the Mosaic law, which serve to reveal the fact, that

* "A Letter to the Rev. W. H. Lyall, M.A., respecting the Ancient Interpretation of Lev. xviii. 18," by the Rev. A. McCaul, D.D. London : Wertheim, Macintosh, and Hunt. 1859.

the relation of the woman to the man in the two cases now under consideration *is not*, in the divine estimation of it, *of the same kind*; although with Christians, in accordance with the prevailing conventional ideas which the Canon law respecting marriage has disseminated and sustained, it has been commonly so judged of.

These ordinances appear to afford ground for inferring, that, according to the scheme of the institution of marriage in the mind of the Creator, *it was not designed* that by marriage the relation of the man to his wife's near kin should become the same *in general* as her's does to his: I say *in general*—because it is evident from Lev. xviii. 17 and xx. 14, that God saw fit to require, that the man should regard his wife's *lineal* relatives *of her sex* like as his own. But, with this qualification, I submit that the truth of the above statement is shown by the fact; that whilst it pleased God to ordain, on the one hand, that the woman by marriage should become possessed of an important claim under certain circumstances from her husband's near kin, *as being near of kin to herself likewise*;* he did not see fit to ordain, with respect to the man, on the other, that the benefit of its being made lawful to the near kin of the wife, to exercise the right of redeeming her husband from servitude in case he should have been driven by poverty to sell himself to a sojourner in the land, should accrue to him: the right of redemption *being restricted to his family* † The inference, therefore, would seem to be a warranted one; that his wife's near kin in general were not regarded in the sight of God as *his near kin also*. Considering that this is a *partial* distinction, and that the state of the law affecting the man in this way does not seem to admit of any special explanation which would negative or neutralize this inference; on what other principle does it seem possible to account for this state of things than that which has been above mentioned? And supposing this principle so concluded to be really founded in truth: then it would seem to follow, as a just application of it, that, as it regards the comparative estimation in which we ought to hold the relationships of brother's wife and wife's sister, we are hereby instructed and required to think, that it is in accordance with the original design of God in the institution of marriage, that the woman in the one case should be regarded as one's near kin in the general sense of the term, and also as prohibited to be taken in marriage by his positive command; but that, in the other,

* Deut. xxv. 5—10; Comp. Ruth ii. 20.

† Lev. xxv. 47—55.

she is not to be so regarded *in either respect*: whence it follows, that if she is called a sister, this should be understood to be done in courtesy only.

4. It would ill become any one, whether woman or man, who is not prepared to disprove the probability of such a collection, to judge it by abstract notions of equity and right; and on this ground to give vent to feelings of dissatisfaction with such a constitution of the relationship of marriage. To do so might possibly be to incur the danger of the same rebuke as was uttered by an apostle of Christ on a like supposition with reference to a profounder mystery: "Nay but, O man, who art thou that repliest against God?" There is just cause, then, that this token, so given us, of what is the divine idea of the nature of this institution in its practical bearing should be attentively read: and, as teaching us the thought of the high and holy One respecting it, "who is righteous in all his ways," but "giveth not account of his matters," should be received with faith. It will then serve to the good practical use of affording to the one party on this question a satisfactory explanation of an apparent discrepancy in the enactments of the divine law of marriage touching these two cases, although they were not offended hereby; and to the other a forcible reason for casting away from themselves the stumbling-block of a false opinion, hindering them from the exercise of a free and candid judgment as to the true intent of this law.

5. I proceed, then, next to pursue the same inquiry with reference to the other cases before mentioned; namely, brother's and sister's daughter as compared with father's and mother's sister; and again, wife's brother's daughter and wife's sister's daughter, as compared with father's brother's wife and mother's brother's wife. As a necessary preliminary to the argument I am about to employ, I must propound an assertion of an opposite complexion to that which is contained in the terms and in the tenor of the right reverend prelate's speech; and profess my recognition of the fact; that, instead of "our being taught the perfect equality of the man and the woman in the regenerating Church of Christ," it is a positive doctrine of Christianity, that our Lord has intended, that the same *inequality* in their relative conditions should continue under the freedom introduced by his gospel, as God in his wisdom, and in the righteous counsel of his own will, determined to ordain respecting them in the beginning, when he instituted the relationship of marriage: and when having created "the woman for the man, and not the man for

“the woman,” he afterwards addressed to her the following declaration of the design with which he had placed her in this relationship—“Thy desire shall be to thy husband : and “he shall rule over thee.” With this inequality, and with whatever was implied in it, and, as we may justly infer, with *whatever conditions also are necessary to the due observance of it on the part of the woman, and to the attainment of its proper ends*, the liberty wherewith Christ came to make us free is shown in the most express manner not to have been intended to interfere. For, this was a liberty, which consisted essentially in the benign influence of the Holy Spirit, delivering the souls of believers from the darkness of ignorance, and the deadness of despair, through the light and precious promises of the gospel ; emancipating them at the same time from the dominion of their corrupt affections, and transforming them into willing servants of righteousness and truth, in the faith, fear, and love of God ; and was also accompanied with the abrogation of a burdensome system of ritual ordinances imposed for a time on God’s ancient people, and likewise with the dissolution of a yet more grievous bondage of human imposition, brought in among them through the perversion and abuse of the written word of God. While, however, its blessed effects in these respects came equally unto all who had hearts to receive the glad tidings of this liberty, and to turn unto the Lord who had commanded it to be proclaimed equally to all, making no distinction between “Jew and Greek, bond and free, male and female,” but intending to unite them all in one brotherhood of holy servants to God in the faith of a common fellowship with himself : he was so far from meaning hereby to put an end to the differences which subsisted in the relative natural and social conditions of those who believed in him, and particularly the inequality of the relative conditions of the man and the woman in the relationship of marriage, according to the original design and decree of the Almighty respecting it ; that nothing can be more certain from the doctrine of his apostles, than that he meant to prepare the way for a more perfect realization of this design ; and also for a more willing submission to the distinctions, which had obtained place in the constitution of the social body, and a more ready and upright discharge of the duties they involved.

6. Now, the truth of these premises being supposed ; whilst it is at the same time admitted, that, because there is an equality in point of relationship between the cases now under consideration and those prohibited cases with which

they are compared, the non-prohibition of the former presents, in the abstract view of it, as well as in its practical consequences, an apparent instance of "not dealing with the two sexes as being equal:" I am prepared to contend, that there is in this discrepancy of rule, as it affects the man and the woman respectively, only a congruity with the primordial declaration of the divine will referred to, respecting the conditions which were to obtain in the estate of matrimony; and which, it will not be denied, were intended to continue in force through all ages until the consummation of the reign of Christ: and that this being so, it at once presents a satisfactory explanation of this matter, and negatives the idea, that there is any inequality towards the woman, *in the sense of withholding what is due*, in such a disposition of the law of marriage as has been alleged; and which it has been the object of the present argument to prove is a well-founded truth.

7. In support of this position, I think it may with good reason be urged, what it would be paradoxical in the extreme for any one to deny, that the common feelings of mankind—of women in general as well as men, of Christians in general as well as other tribes of men—have recognized a natural unsuitableness in those marriages where there would be a very considerable advantage in point of age on the side of the woman; a feeling, which must necessarily find greater scope for its manifestation, should this superiority in age be found coupled with a superiority in point of natural relationship also. Such an universal sentiment is properly accounted for, by assuming that there exists in the minds of human beings an instinctive moral sense of this matter, having its origin in the light of nature; which being but another name for the influence of the Deity, converts this moral sentiment into a thought of the divine mind also; and stamps it with the reality of truth. But can this unsuitableness of such marriages, which nature teaches, be a true thought of the divine mind for any other more probable reason, than that the presence of such conditions as have just been named on the side of the married woman would not be in unison with, but would rather contravene, the realization of that primordial intention of his will respecting the relationship of marriage, to which reference has been made; and which realization it is implied by the doctrine of Christ's apostles is to find its place, as well under the freedom of the Gospel, as before under the bondage of the Law? If this must be admitted to be in all probability the truth, then a substantial reason is found for the discre-